

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1124

By: West (Kevin)

4
5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Section 2, Chapter 208, O.S.L. 2013, as amended by
9 Section 1, Chapter 150, O.S.L. 2018 (85A O.S. Supp.
10 2018, Section 2), which relates to definitions in the
11 Administrative Workers' Compensation Act; modifying
12 definition; and declaring an emergency.

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

14 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
15 2013, as amended by Section 1, Chapter 150, O.S.L. 2018 (85A O.S.
16 Supp. 2018, Section 2), is amended to read as follows:

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

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

22 2. "Carrier" means any stock company, mutual company, or
23 reciprocal or interinsurance exchange authorized to write or carry
24 on the business of workers' compensation insurance in this state.

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
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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, or
19 marijuana used without possession of a state-
20 issued medical marijuana license. If, within
21 twenty-four (24) hours of being injured or
22 reporting an injury, an employee tests positive
23 for intoxication, an illegal controlled
24 substance, ~~or~~ a legal controlled substance used

1 in contravention to a treating physician's
2 orders, or marijuana used without possession of a
3 state-issued medical marijuana license, or
4 refuses to undergo the drug and alcohol testing,
5 there shall be a rebuttable presumption that the
6 injury was caused by the use of alcohol, illegal
7 drugs, or prescription drugs used in
8 contravention of physician's orders. This
9 presumption may only be overcome if the employee
10 proves by clear and convincing evidence that his
11 or her state of intoxication had no causal
12 relationship to the injury,

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

23 (6) any preexisting condition except when the
24 treating physician clearly confirms an

1 identifiable and significant aggravation incurred
2 in the course and scope of employment.

3 c. The definition of "compensable injury" shall not be
4 construed to limit or abrogate the right to recover
5 for mental injuries as described in Section 13 of this
6 title, heart or lung injury or illness as described in
7 Section 14 of this title, or occupational diseases as
8 described in Section 65 of this title.

9 d. A compensable injury shall be established by medical
10 evidence supported by objective findings as defined in
11 paragraph 31 of this section.

12 e. The injured employee shall prove by a preponderance of
13 the evidence that he or she has suffered a compensable
14 injury.

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

22 g. An employee who suffers a compensable injury shall be
23 entitled to receive compensation as prescribed in this
24 act. Notwithstanding other provisions of law, if it

1 is determined that a compensable injury did not occur,
2 the employee shall not be entitled to compensation
3 under this act;

4 10. "Compensation" means the money allowance payable to the
5 employee or to his or her dependents and includes the medical
6 services and supplies provided for in Section 50 of this title and
7 funeral expenses;

8 11. "Consequential injury" means injury or harm to a part of
9 the body that is a direct result of the injury or medical treatment
10 to the part of the body originally injured in the claim. The
11 Commission shall not make a finding of a consequential injury unless
12 it is established by objective medical evidence that medical
13 treatment for such part of the body is required;

14 12. "Continuing medical maintenance" means medical treatment
15 that is reasonable and necessary to maintain claimant's condition
16 resulting from the compensable injury or illness after reaching
17 maximum medical improvement. Continuing medical maintenance shall
18 not include diagnostic tests, surgery, injections, counseling,
19 physical therapy, or pain management devices or equipment;

20 13. "Course and scope of employment" means an activity of any
21 kind or character for which the employee was hired and that relates
22 to and derives from the work, business, trade or profession of an
23 employer, and is performed by an employee in the furtherance of the
24 affairs or business of an employer. The term includes activities

1 conducted on the premises of an employer or at other locations
2 designated by an employer and travel by an employee in furtherance
3 of the affairs of an employer that is specifically directed by the
4 employer. This term does not include:

5 a. an employee's transportation to and from his or her
6 place of employment,

7 b. travel by an employee in furtherance of the affairs of
8 an employer if the travel is also in furtherance of
9 personal or private affairs of the employee,

10 c. any injury occurring in a parking lot or other common
11 area adjacent to an employer's place of business
12 before the employee clocks in or otherwise begins work
13 for the employer or after the employee clocks out or
14 otherwise stops work for the employer, or

15 d. any injury occurring while an employee is on a work
16 break, unless the injury occurs while the employee is
17 on a work break inside the employer's facility and the
18 work break is authorized by the employee's supervisor;

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

1 employment. Cumulative trauma shall have resulted directly and
2 independently of all other causes and the employee shall have
3 completed at least one hundred eighty (180) days of continuous
4 active employment with the employer;

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

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

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

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

1 incarcerated. "Employee" shall also include a member
2 of the Oklahoma National Guard while in the
3 performance of duties only while in response to state
4 orders and any authorized voluntary or uncompensated
5 worker, rendering services as a firefighter, peace
6 officer or emergency management worker. Travel by a
7 policeman, fireman, or a member of a first aid or
8 rescue squad, in responding to and returning from an
9 emergency, shall be deemed to be in the course of
10 employment.

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

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

21 (2) any person who is employed in agriculture,
22 ranching or horticulture by an employer who had a
23 gross annual payroll in the preceding calendar
24 year of less than One Hundred Thousand Dollars

1 (\$100,000.00) wages for agricultural, ranching or
2 horticultural workers, or any person who is
3 employed in agriculture, ranching or horticulture
4 who is not engaged in operation of motorized
5 machines. This exemption applies to any period
6 of time for which such employment exists,
7 irrespective of whether or not the person is
8 employed in other activities for which the
9 exemption does not apply. If the person is
10 employed for part of a year in exempt activities
11 and for part of a year in nonexempt activities,
12 the employer shall be responsible for providing
13 workers' compensation only for the period of time
14 for which the person is employed in nonexempt
15 activities,

16 (3) any person who is a licensed real estate sales
17 associate or broker, paid on a commission basis,

18 (4) any person who is providing services in a medical
19 care or social services program, or who is a
20 parparticipant in a work or training program,
21 administered by the Department of Human Services,
22 unless the Department is required by federal law
23 or regulations to provide workers' compensation
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1 for such person. This division shall not be
2 construed to include nursing homes,

3 (5) any person employed by an employer with five or
4 fewer total employees, all of whom are related by
5 blood or marriage to the employer, if the
6 employer is a natural person or a general or
7 limited partnership, or an incorporator of a
8 corporation if the corporation is the employer,

9 (6) any person employed by an employer which is a
10 youth sports league which qualifies for exemption
11 from federal income taxation pursuant to federal
12 law,

13 (7) sole proprietors, members of a partnership,
14 individuals who are party to a franchise
15 agreement as set out by the Federal Trade
16 Commission franchise disclosure rule, 16 CFR
17 436.1 through 436.11, members of a limited
18 liability company who own at least ten percent
19 (10%) of the capital of the limited liability
20 company or any stockholder-employees of a
21 corporation who own ten percent (10%) or more
22 stock in the corporation, unless they elect to be
23 covered by a policy of insurance covering
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1 benefits under the Administrative Workers'
2 Compensation Act,

3 (8) any person providing or performing voluntary
4 service who receives no wages for the services
5 other than meals, drug or alcohol rehabilitative
6 therapy, transportation, lodging or reimbursement
7 for incidental expenses except for volunteers
8 specifically provided for in subparagraph a of
9 this paragraph,

10 (9) a person, commonly referred to as an owner-
11 operator, who owns or leases a truck-tractor or
12 truck for hire, if the owner-operator actually
13 operates the truck-tractor or truck and if the
14 person contracting with the owner-operator is not
15 the lessor of the truck-tractor or truck.

16 Provided, however, an owner-operator shall not be
17 precluded from workers' compensation coverage
18 under the Administrative Workers' Compensation
19 Act if the owner-operator elects to participate
20 as a sole proprietor,

21 (10) a person referred to as a drive-away owner-
22 operator who privately owns and utilizes a tow
23 vehicle in drive-away operations and operates
24 independently for hire, if the drive-away owner-

1 operator actually utilizes the tow vehicle and if
2 the person contracting with the drive-away owner-
3 operator is not the lessor of the tow vehicle.
4 Provided, however, a drive-away owner-operator
5 shall not be precluded from workers' compensation
6 coverage under the Administrative Workers'
7 Compensation Act if the drive-away owner-operator
8 elects to participate as a sole proprietor, and

9 (11) any person who is employed as a domestic servant
10 or as a casual worker in and about a private home
11 or household, which private home or household had
12 a gross annual payroll in the preceding calendar
13 year of less than Fifty Thousand Dollars
14 (\$50,000.00) for such workers;

15 19. "Employer" means a person, partnership, association,
16 limited liability company, corporation, and the legal
17 representatives of a deceased employer, or the receiver or trustee
18 of a person, partnership, association, corporation, or limited
19 liability company, departments, instrumentalities and institutions
20 of this state and divisions thereof, counties and divisions thereof,
21 public trusts, boards of education and incorporated cities or towns
22 and divisions thereof, employing a person included within the term
23 "employee" as defined in this section. Employer may also mean the
24 employer's workers' compensation insurance carrier, if applicable.

1 Except as provided otherwise, this act applies to all public and
2 private entities and institutions. Employer shall not include a
3 qualified employer with an employee benefit plan as provided under
4 the Oklahoma Employee Injury Benefit Act in Sections 200 through 213
5 of this title;

6 20. "Employment" includes work or labor in a trade, business,
7 occupation or activity carried on by an employer or any authorized
8 voluntary or uncompensated worker rendering services as a
9 firefighter, peace officer or emergency management worker;

10 21. "Evidence-based" means expert-based, literature-supported
11 and outcomes validated by well-designed randomized trials when such
12 information is available and which uses the best available evidence
13 to support medical decision making;

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

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

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

5 25. "Insurance Commissioner" means the Insurance Commissioner
6 of the State of Oklahoma;

7 26. "Insurance Department" means the Insurance Department of
8 the State of Oklahoma;

9 27. "Major cause" means more than fifty percent (50%) of the
10 resulting injury, disease or illness. A finding of major cause
11 shall be established by a preponderance of the evidence. A finding
12 that the workplace was not a major cause of the injury, disease or
13 illness shall not adversely affect the exclusive remedy provisions
14 of this act and shall not create a separate cause of action outside
15 this act;

16 28. "Maximum medical improvement" means that no further
17 material improvement would reasonably be expected from medical
18 treatment or the passage of time;

19 29. "Medical services" means those services specified in
20 Section 50 of this title;

21 30. "Misconduct" shall include the following:

- 22 a. unexplained absenteeism or tardiness,
- 23 b. willful or wanton indifference to or neglect of the
24 duties required,

- c. willful or wanton breach of any duty required by the employer,
- d. the mismanagement of a position of employment by action or inaction,
- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

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

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the most current edition of the American Medical

1 Association "Guides to the Evaluation of
2 Permanent Impairment".

3 (3) (a) Objective evidence necessary to prove
4 permanent disability in occupational hearing
5 loss cases may be established by medically
6 recognized and accepted clinical diagnostic
7 methodologies, including, but not limited
8 to, audiological tests that measure air and
9 bone conduction thresholds and speech
10 discrimination ability.

11 (b) Any difference in the baseline hearing
12 levels shall be confirmed by subsequent
13 testing; provided, however, such test shall
14 be given within four (4) weeks of the
15 initial baseline hearing level test but not
16 before five (5) days after being adjusted
17 for presbycusis.

18 b. Medical opinions addressing compensability and
19 permanent disability shall be stated within a
20 reasonable degree of medical certainty;

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

1 33. "Permanent disability" means the extent, expressed as a
2 percentage, of the loss of a portion of the total physiological
3 capabilities of the human body as established by competent medical
4 evidence and based on the current edition of the American Medical
5 Association guides to the evaluation of impairment, if the
6 impairment is contained therein;

7 34. "Permanent partial disability" means a permanent disability
8 or loss of use after maximum medical improvement has been reached
9 which prevents the injured employee, who has been released to return
10 to work by the treating physician, from returning to his or her pre-
11 injury or equivalent job. All evaluations of permanent partial
12 disability must be supported by objective findings;

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

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

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

6 38. "Private self-insurer" means a private employer that has
7 been authorized to self-insure its workers' compensation obligations
8 pursuant to this act, but does not include group self-insurance
9 associations authorized by this act, or any public employer that
10 self-insures pursuant to this act;

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

14 40. "Scheduled member" or "member" means hands, fingers, arms,
15 legs, feet, toes, and eyes. In addition, for purposes of the
16 Multiple Injury Trust Fund only, "scheduled member" means hearing
17 impairment;

18 41. "Scientifically based" involves the application of
19 rigorous, systematic, and objective procedures to obtain reliable
20 and valid knowledge relevant to medical testing, diagnoses and
21 treatment; is adequate to justify the general conclusions drawn; and
22 has been accepted by a peer-review journal or approved by a panel of
23 independent experts through a comparably rigorous, objective, and
24 scientific review;

1 42. "State average weekly wage" means the state average weekly
2 wage determined by the Oklahoma Employment Security Commission in
3 the preceding calendar year. If such determination is not
4 available, the Commission shall determine the wage annually after
5 reasonable investigation;

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

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

11 45. "Surviving spouse" means the employee's spouse by reason of
12 a legal marriage recognized by the State of Oklahoma or under the
13 requirements of a common law marriage in this state, as determined
14 by the Workers' Compensation Commission;

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

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

21 48. "Wages" means money compensation received for employment at
22 the time of the accident, including the reasonable value of board,
23 rent, housing, lodging, or similar advantage received from the
24 employer and includes the amount of tips required to be reported by

1 the employer under Section 6053 of the Internal Revenue Code and the
2 regulations promulgated pursuant thereto or the amount of actual
3 tips reported, whichever amount is greater.

4 SECTION 2. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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