

1 **SENATE FLOOR VERSION**

2 February 25, 2020

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1818

6 By: Daniels

7 An Act relating to workers' compensation; amending
8 Section 2, Chapter 208, O.S.L. 2013, as last amended
9 by Section 1, Chapter 476, O.S.L. 2019, Section 3,
10 Chapter 208, O.S.L. 2013, as amended by Section 2,
11 Chapter 476, O.S.L. 2019, Section 5, Chapter 208,
12 O.S.L. 2013, as amended by Section 3, Chapter 476,
13 O.S.L. 2019, Section 46, Chapter 208, O.S.L. 2019, as
14 amended by Section 18, Chapter 476, O.S.L. 2019 and
15 Section 80, Chapter 208, O.S.L. 2013, as amended by
16 Section 30, Chapter 476, O.S.L. 2019 (85A O.S. Supp.
17 2019, Sections 2, 3, 5, 46 and 80), which relate to
18 definitions, applicability, exclusive liability,
19 permanent partial disability schedule and review of
20 compensation judgments; modifying definitions;
21 modifying injury for which provisions apply;
22 conforming language; modifying certain exception to
23 exclusive remedy; increasing maximum weekly limit for
24 certain disability awards; modifying requirements for
application for change of condition; updating
statutory references; and providing an effective
date.

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

SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
2013, as last amended by Section 1, Chapter 476, O.S.L. 2019 (85A
O.S. Supp. 2019, Section 2), is amended to read as follows:

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

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

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

9 Whenever required by the context, the term "carrier" shall be deemed
10 to include duly qualified self-insureds or self-insured groups;

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

21 4. "Case manager" means a person who is a registered nurse with
22 a current, active unencumbered license from the Oklahoma Board of
23 Nursing, or possesses one or more of the following certifications
24 which indicate the individual has a minimum number of years of case

1 management experience, has passed a national competency test and
2 regularly obtains continuing education hours to maintain
3 certification:

- 4 a. Certified Disability Management Specialist (CDMS),
- 5 b. Certified Case Manager (CCM),
- 6 c. Certified Rehabilitation Registered Nurse (CRRN),
- 7 d. Case Manager - Certified (CMC),
- 8 e. Certified Occupational Health Nurse (COHN), or
- 9 f. Certified Occupational Health Nurse Specialist (COHN-
10 S);

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

21 6. "Child" means a natural or adopted son or daughter of the
22 employee under eighteen (18) years of age; or a natural or adopted
23 son or daughter of an employee eighteen (18) years of age or over
24 who is physically or mentally incapable of self-support; or any

1 natural or adopted son or daughter of an employee eighteen (18)
2 years of age or over who is actually dependent; or any natural or
3 adopted son or daughter of an employee between eighteen (18) and
4 twenty-three (23) years of age who is enrolled as a full-time
5 student in any accredited educational institution. The term "child"
6 includes a posthumous child, a child legally adopted or one for whom
7 adoption proceedings are pending at the time of death, an actually
8 dependent stepchild or an actually dependent acknowledged child born
9 out of wedlock;

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

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

14 9. a. "Compensable injury" means damage or harm to the
15 physical structure of the body, or damage or harm to
16 prosthetic appliances, including eyeglasses, contact
17 lenses, or hearing aids, of which the major cause is
18 either an accident, cumulative trauma or occupational
19 disease arising out of the course and scope of
20 employment. An "accident" means an event involving
21 factors external to the employee that:

22 (1) was unintended, unanticipated, unforeseen,
23 unplanned and unexpected,
24

- 1 (2) occurred at a specifically identifiable time and
2 place,
3 (3) occurred by chance or from unknown causes, ~~or~~
4 (4) was independent of sickness, mental incapacity,
5 bodily infirmity or any other cause.

6 b. "Compensable injury" does not include:

- 7 (1) injury to any active participant in assaults or
8 combats which, although they may occur in the
9 workplace, are the result of non-employment-
10 related hostility or animus of one, both, or all
11 of the combatants and which assault or combat
12 amounts to a deviation from customary duties;
13 provided, however, injuries caused by horseplay
14 shall not be considered to be compensable
15 injuries, except for innocent victims,
16 (2) injury incurred while engaging in or performing
17 or as the result of engaging in or performing any
18 recreational or social activities for the
19 employee's personal pleasure,
20 (3) injury which was inflicted on the employee at a
21 time when employment services were not being
22 performed or before the employee was hired or
23 after the employment relationship was terminated,
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1 (4) injury if the accident was caused by the use of
2 alcohol, illegal drugs, or prescription drugs
3 used in contravention of physician's orders. If
4 a biological specimen is collected within twenty-
5 four (24) hours of the employee being injured or
6 reporting an injury, or if at any time after the
7 injury a biological specimen is collected by the
8 Oklahoma Office of the Chief Medical Examiner if
9 the injured employee does not survive for at
10 least twenty-four (24) hours after the injury and
11 the employee tests positive for intoxication, an
12 illegal controlled substance, or a legal
13 controlled substance used in contravention to a
14 treating physician's orders, or refuses to
15 undergo the drug and alcohol testing, there shall
16 be a rebuttable presumption that the injury was
17 caused by the use of alcohol, illegal drugs, or
18 prescription drugs used in contravention of
19 physician's orders. This presumption may only be
20 overcome if the employee proves by clear and
21 convincing evidence that his or her state of
22 intoxication had no causal relationship to the
23 injury,
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1 (5) any strain, degeneration, damage or harm to, or
2 disease or condition of, the eye or
3 musculoskeletal structure or other body part
4 resulting from the natural results of aging,
5 osteoarthritis, arthritis, or degenerative
6 process including, but not limited to,
7 degenerative joint disease, degenerative disc
8 disease, degenerative
9 spondylosis/spondylolisthesis and spinal
10 stenosis, ~~or~~

11 (6) any preexisting condition except when the
12 treating physician clearly confirms an
13 identifiable and significant aggravation incurred
14 in the course and scope of employment, or

15 (7) any injury resulting from an idiopathic injury or
16 condition.

17 c. Where compensation is payable for an injury resulting
18 from cumulative trauma, the last employer in whose
19 employment the employee was last injuriously exposed
20 to the trauma during a period of at least ninety (90)
21 days or more, and the insurance carrier, if any, on
22 the risk when the employee was last so exposed under
23 such employer, shall alone be liable therefor, without
24 right to contribution from any prior employer or

1 insurance carrier. If there is no employer in whose
2 employment the employee was injuriously exposed to the
3 trauma for a period of at least ninety (90) days, then
4 the last employer in whose employment the employee was
5 last injuriously exposed to the trauma and the
6 insurance carrier, if any, on the risk when such
7 employee was last so exposed under such employer,
8 shall be liable therefor, with right to contribution
9 from any prior employer or insurance carrier.

10 d. A compensable injury shall be established by medical
11 evidence supported by objective findings as defined in
12 paragraph ~~31~~ 33 of this section.

13 ~~d.~~

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

17 ~~e.~~

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

1 ~~f.~~

2 g. An employee who suffers a compensable injury shall be
3 entitled to receive compensation as prescribed in ~~this~~
4 ~~act~~ the Administrative Workers' Compensation Act.

5 Notwithstanding other provisions of law, if it is
6 determined that a compensable injury did not occur,
7 the employee shall not be entitled to compensation
8 under ~~this act~~ the Administrative Workers'
9 Compensation Act;

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

14 11. "Consequential injury" means injury or harm to a part of
15 the body that is a direct result of the injury or medical treatment
16 to the part of the body originally injured in the claim. The
17 Commission shall not make a finding of a consequential injury unless
18 it is established by objective medical evidence that medical
19 treatment for such part of the body is required;

20 12. "Continuing medical maintenance" means medical treatment
21 that is reasonable and necessary to maintain claimant's condition
22 resulting from the compensable injury or illness after reaching
23 maximum medical improvement. Continuing medical maintenance shall
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1 not include diagnostic tests, surgery, injections, counseling,
2 physical therapy, or pain management devices or equipment;

3 13. "Course and scope of employment" means an activity of any
4 kind or character for which the employee was hired and that relates
5 to and derives from the work, business, trade or profession of an
6 employer, and is performed by an employee in the furtherance of the
7 affairs or business of an employer. The term includes activities
8 conducted on the premises of an employer or at other locations
9 designated by an employer and travel by an employee in furtherance
10 of the affairs of an employer that is specifically directed by the
11 employer. This term does not include:

- 12 a. an employee's transportation to and from his or her
13 place of employment,
- 14 b. travel by an employee in furtherance of the affairs of
15 an employer if the travel is also in furtherance of
16 personal or private affairs of the employee,
- 17 c. any injury occurring in a parking lot or other common
18 area adjacent to an employer's place of business
19 before the employee clocks in or otherwise begins work
20 for the employer or after the employee clocks out or
21 otherwise stops work for the employer unless the
22 employer owns or maintains exclusive control over the
23 area, or

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1 d. any injury occurring while an employee is on a work
2 break, unless the injury occurs while the employee is
3 on a work break inside the employer's facility or in
4 an area owned by or exclusively controlled by the
5 employer and the work break is authorized by the
6 employee's supervisor;

7 14. "Cumulative trauma" means an injury to an employee that is
8 caused by the combined effect of repetitive physical activities
9 extending over a period of time in the course and scope of
10 employment. Cumulative trauma shall not mean fatigue, soreness or
11 general aches and pain that may have been caused, aggravated,
12 exacerbated or accelerated by the employee's course and scope of
13 employment. Cumulative trauma shall have resulted directly and
14 independently of all other causes;

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

17 16. "Disability" means incapacity because of compensable injury
18 to earn, in the same or any other employment, substantially the same
19 amount of wages the employee was receiving at the time of the
20 compensable injury;

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

3 18. a. "Employee" means any person, including a minor, in the
4 service of an employer under any contract of hire or
5 apprenticeship, written or oral, expressed or implied,
6 but excluding one whose employment is casual and not
7 in the course of the trade, business, profession, or
8 occupation of his or her employer and excluding one
9 who is required to perform work for a municipality or
10 county or the state or federal government on having
11 been convicted of a criminal offense or while
12 incarcerated. "Employee" shall also include a member
13 of the Oklahoma National Guard while in the
14 performance of duties only while in response to state
15 orders and any authorized voluntary or uncompensated
16 worker, rendering services as a firefighter, law
17 enforcement officer or emergency management worker.
18 Travel by a police officer, fireman, or a member of a
19 first aid or rescue squad, in responding to and
20 returning from an emergency, shall be deemed to be in
21 the course of employment.

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

23 (1) any person for whom an employer is liable under
24 any Act of Congress for providing compensation to

1 employees for injuries, disease or death arising
2 out of and in the course of employment including,
3 but not limited to, the Federal Employees'
4 Compensation Act, the Federal Employers'
5 Liability Act, the Longshore and Harbor Workers'
6 Compensation Act and the Jones Act, to the extent
7 his or her employees are subject to such acts,

8 (2) any person who is employed in agriculture,
9 ranching or horticulture by an employer who had a
10 gross annual payroll in the preceding calendar
11 year of less than One Hundred Thousand Dollars
12 (\$100,000.00) wages for agricultural, ranching or
13 horticultural workers, or any person who is
14 employed in agriculture, ranching or horticulture
15 who is not engaged in operation of motorized
16 machines. This exemption applies to any period
17 of time for which such employment exists,
18 irrespective of whether or not the person is
19 employed in other activities for which the
20 exemption does not apply. If the person is
21 employed for part of a year in exempt activities
22 and for part of a year in nonexempt activities,
23 the employer shall be responsible for providing
24 workers' compensation only for the period of time

1 for which the person is employed in nonexempt
2 activities,

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

5 (4) any person who is providing services in a medical
6 care or social services program, or who is a
7 participant in a work or training program,
8 administered by the Department of Human Services,
9 unless the Department is required by federal law
10 or regulations to provide workers' compensation
11 for such person. This division shall not be
12 construed to include nursing homes,

13 (5) any person employed by an employer with five or
14 fewer total employees, all of whom are related
15 within the second degree by blood or marriage to
16 the employer, all of whom are dependents living
17 in the household of the employer, or all of whom
18 are a combination of such relatives and
19 dependents. If the employer is not a natural
20 person such relative shall be related within the
21 second degree by blood or marriage to a person
22 who owns fifty percent (50%) or more of the
23 employer, or such dependent shall be in the
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1 household of a person who owns fifty percent
2 (50%) or more of the employer,

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

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

20 (8) any person providing or performing voluntary
21 service who receives no wages for the services
22 other than meals, drug or alcohol rehabilitative
23 therapy, transportation, lodging or reimbursement
24 for incidental expenses except for volunteers

1 specifically provided for in subparagraph a of
2 this paragraph,

3 (9) a person, commonly referred to as an owner-
4 operator, who owns or leases a truck-tractor or
5 truck for hire, if the owner-operator actually
6 operates the truck-tractor or truck and if the
7 person contracting with the owner-operator is not
8 the lessor of the truck-tractor or truck.

9 Provided, however, an owner-operator shall not be
10 precluded from workers' compensation coverage
11 under the Administrative Workers' Compensation
12 Act if the owner-operator elects to participate
13 as a sole proprietor,

14 (10) a person referred to as a drive-away owner-
15 operator who privately owns and utilizes a tow
16 vehicle in drive-away operations and operates
17 independently for hire, if the drive-away owner-
18 operator actually utilizes the tow vehicle and if
19 the person contracting with the drive-away owner-
20 operator is not the lessor of the tow vehicle.

21 Provided, however, a drive-away owner-operator
22 shall not be precluded from workers' compensation
23 coverage under the Administrative Workers'

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1 Compensation Act if the drive-away owner-operator
2 elects to participate as a sole proprietor, and
3 (11) any person who is employed as a domestic servant
4 or as a casual worker in and about a private home
5 or household, which private home or household had
6 a gross annual payroll in the preceding calendar
7 year of less than Fifty Thousand Dollars
8 (\$50,000.00) for such workers;

9 19. "Employer" means a natural person, partnership,
10 association, limited liability company, corporation, and the legal
11 representatives of a deceased employer, or the receiver or trustee
12 of a person, partnership, association, corporation, or limited
13 liability company, departments, instrumentalities and institutions
14 of this state and divisions thereof, counties and divisions thereof,
15 public trusts, boards of education and incorporated cities or towns
16 and divisions thereof, employing a person included within the term
17 "employee" as defined in this section. Employer may also mean the
18 employer's workers' compensation insurance carrier, if applicable.
19 Except as provided otherwise, ~~this act~~ the Administrative Workers'
20 Compensation Act applies to all public and private entities and
21 institutions;

22 20. "Employment" includes work or labor in a trade, business,
23 occupation or activity carried on by an employer or any authorized
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1 voluntary or uncompensated worker rendering services 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. "Idiopathic" means an injury or condition, where neither
11 the cause, nor the resulting injury bears any special relation to
12 the work or to the conditions under which the act was being
13 performed and though it occurs in the course of the employment, does
14 not arise out of the employment;

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

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1 ~~24.~~ 25. "Incapacity" means inadequate strength or ability to
2 perform a work-related task;

3 ~~25.~~ 26. "Insurance Commissioner" means the Insurance
4 Commissioner of the State of Oklahoma;

5 ~~26.~~ 27. "Insurance Department" means the Insurance Department
6 of the State of Oklahoma;

7 ~~27.~~ 28. "Major cause" means more than fifty percent (50%) of
8 the resulting injury, disease or illness. A finding of major cause
9 shall be established by a preponderance of the evidence. A finding
10 that the workplace was not a major cause of the injury, disease or
11 illness shall not adversely affect the exclusive remedy provisions
12 of ~~this act~~ the Administrative Workers' Compensation Act and shall
13 not create a separate cause of action outside ~~this act~~ the
14 Administrative Workers' Compensation Act;

15 ~~28.~~ 29. "Maximum medical improvement" means that no further
16 material improvement would reasonably be expected from medical
17 treatment or the passage of time;

18 ~~29.~~ 30. "Medical services" means those services specified in
19 Section 50 of this title;

20 ~~30.~~ 31. "Misconduct" shall include the following:

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

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- 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.~~ 32.

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 Sixth Edition of the American Medical Association

1 "Guides to the Evaluation of Permanent
2 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.~~ 33. "Official Disability Guidelines" or "ODG" means the
22 current edition of the Official Disability Guidelines and the ODG
23 Treatment in Workers' Comp as published by the Work Loss Data
24 Institute;

1 ~~33.~~ 34. "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 Sixth Edition of the American Medical
5 Association guides to the evaluation of impairment, if the
6 impairment is contained therein;

7 ~~34.~~ 35. "Permanent partial disability" means a permanent
8 disability or loss of use after maximum medical improvement has been
9 reached which prevents the injured employee, who has been released
10 to return to work by the treating physician, from returning to his
11 or her pre-injury or equivalent job. All evaluations of permanent
12 partial disability must be supported by objective findings;

13 ~~35.~~ 36. "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~~ the Administrative Workers' Compensation Act. Loss of both
19 hands, both feet, both legs, or both eyes, or any two thereof, shall
20 constitute permanent total disability;

21 ~~36.~~ 37. "Preexisting condition" means any illness, injury,
22 disease, or other physical or mental condition, whether or not work-
23 related, for which medical advice, diagnosis, care or treatment was
24 recommended or received preceding the date of injury;

1 ~~37.~~ 38. "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.~~ 39. "Private self-insurer" means a private employer that
7 has been authorized to self-insure its workers' compensation
8 obligations pursuant to ~~this act~~ the Administrative Workers'
9 Compensation Act, but does not include group self-insurance
10 associations authorized by ~~this act~~ the Administrative Workers'
11 Compensation Act, or any public employer that self-insures pursuant
12 to ~~this act~~ the Administrative Workers' Compensation Act;

13 ~~39.~~ 40. "Prosthetic" means an artificial device used to replace
14 a part or joint of the body that is lost or injured in an accident
15 or illness covered by ~~this act~~ the Administrative Workers'
16 Compensation Act;

17 ~~40.~~ 41. "Scheduled member" or "member" means hands, fingers,
18 arms, legs, feet, toes, and eyes. In addition, for purposes of the
19 Multiple Injury Trust Fund only, "scheduled member" means hearing
20 impairment;

21 ~~41.~~ 42. "Scientifically based" involves the application of
22 rigorous, systematic, and objective procedures to obtain reliable
23 and valid knowledge relevant to medical testing, diagnoses and
24 treatment; is adequate to justify the general conclusions drawn; and

1 has been accepted by a peer-review journal or approved by a panel of
2 independent experts through a comparably rigorous, objective, and
3 scientific review;

4 ~~42.~~ 43. "State average weekly wage" means the state average
5 weekly wage determined by the Oklahoma Employment Security
6 Commission in the preceding calendar year. If such determination is
7 not available, the Commission shall determine the wage annually
8 after reasonable investigation;

9 ~~43.~~ 44. "Subcontractor" means a person, firm, corporation or
10 other legal entity hired by the general or prime contractor to
11 perform a specific task for the completion of a work-related
12 activity;

13 ~~44.~~ 45. "Surgery" does not include an injection, or the forcing
14 of fluids beneath the skin, for treatment or diagnosis;

15 ~~45.~~ 46. "Surviving spouse" means the employee's spouse by
16 reason of a legal marriage recognized by the State of Oklahoma or
17 under the requirements of a common law marriage in this state, as
18 determined by the Workers' Compensation Commission;

19 ~~46.~~ 47. "Temporary partial disability" means an injured
20 employee who is temporarily unable to perform his or her job, but
21 may perform alternative work offered by the employer;

22 ~~47.~~ 48. "Time of accident" or "date of accident" means the time
23 or date of the occurrence of the accidental incident from which
24 compensable injury, disability, or death results; and

1 ~~48.~~ 49. "Wages" means money compensation received for
2 employment at the time of the accident, including the reasonable
3 value of board, rent, housing, lodging, or similar advantage
4 received from the employer and includes the amount of tips required
5 to be reported by the employer under Section 6053 of the Internal
6 Revenue Code and the regulations promulgated pursuant thereto or the
7 amount of actual tips reported, whichever amount is greater.

8 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
9 2013, as amended by Section 2, Chapter 476, O.S.L. 2019 (85A O.S.
10 Supp. 2019, Section 3), is amended to read as follows:

11 Section 3. A. Every employer and every employee, unless
12 otherwise specifically provided in ~~this act~~ the Administrative
13 Workers' Compensation Act, shall be subject and bound to the
14 provisions of the Administrative Workers' Compensation Act and every
15 employer shall pay or provide benefits according to the provisions
16 of ~~this act~~ the Administrative Workers' Compensation Act for the
17 ~~accidental~~ compensable injury or death of an employee arising out of
18 and in the course of his or her employment, without regard to fault
19 for such injury, if the employee's contract of employment was made
20 or if the injury occurred within this state. If an employee makes a
21 claim for an injury in another jurisdiction, the employee is
22 precluded from his or her right of action under the Administrative
23 Workers' Compensation Act unless the Workers' Compensation
24 Commission determines that there is a change in circumstances that

1 creates a good cause to bring the claim under the Administrative
2 Workers' Compensation Act; provided, however, that the employee may
3 not receive duplicate benefits to those received in the foreign
4 jurisdiction and the employee's right to bring a claim under ~~this~~
5 ~~act~~ the Administrative Workers' Compensation Act shall be subject to
6 the limitations period for bringing a claim pursuant to paragraph 1
7 of subsection A of Section 69 of this title. Nothing in ~~this act~~
8 the Administrative Workers' Compensation Act shall be construed to
9 conflict with any valid Act of Congress governing the liability of
10 employers for injuries received by their employees.

11 B. The State of Oklahoma accepts the provisions of the Acts of
12 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
13 Section 290, and hereby extends the territorial jurisdiction of the
14 Administrative Workers' Compensation Act of this state to all lands
15 and premises within the exterior boundaries of this state which the
16 Government of the United States of America owns or holds by deed or
17 act of cession, and to all purchases, projects, buildings,
18 constructions, improvements and property within the exterior
19 boundaries of this state belonging to the Government of the United
20 States of America, in the same manner and to the same extent as if
21 the premises were under the exclusive jurisdiction of this state,
22 subject only to the limitations placed thereon by the Acts of
23 Congress.

24

1 C. The Administrative Workers' Compensation Act shall apply
2 only to claims for injuries and death ~~based on accidents~~ which occur
3 on or after February 1, 2014.

4 D. The Workers' Compensation Code in effect before February 1,
5 2014, shall govern all rights in respect to claims for injuries and
6 death ~~based on accidents~~ occurring before February 1, 2014.

7 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.
8 2013, as amended by Section 3, Chapter 476, O.S.L. 2019 (85A O.S.
9 Supp. 2019, Section 5), is amended to read as follows:

10 Section 5. A. The rights and remedies granted to an employee
11 subject to the provisions of the Administrative Workers'
12 Compensation Act shall be exclusive of all other rights and remedies
13 of the employee, his legal representative, dependents, next of kin,
14 or anyone else claiming rights to recovery on behalf of the employee
15 against the employer, or any principal, officer, director, employee,
16 stockholder, partner, or prime contractor of the employer on account
17 of injury, illness, or death. Negligent acts of a co-employee may
18 not be imputed to the employer. No role, capacity, or persona of
19 any employer, principal, officer, director, employee, or stockholder
20 other than that existing in the role of employer of the employee
21 shall be relevant for consideration for purposes of ~~this act~~ the
22 Administrative Workers' Compensation Act, and the remedies and
23 rights provided by ~~this act~~ the Administrative Workers' Compensation
24

1 Act shall be exclusive regardless of the multiple roles, capacities,
2 or personas the employer may be deemed to have.

3 B. Exclusive remedy shall not apply if:

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

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

21 C. The immunity from civil liability described in subsection A
22 of this section shall apply regardless of whether the injured
23 employee is denied compensation or deemed ineligible to receive
24

1 compensation under ~~this act~~ the Administrative Workers' Compensation
2 Act.

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

9 E. The immunity created by the provisions of this section shall
10 not extend to action against another employer, or its employees, on
11 the same job as the injured or deceased worker where such other
12 employer does not stand in the position of an intermediate or
13 principal employer to the immediate employer of the injured or
14 deceased worker.

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

23 G. This section shall not be construed to abrogate the loaned
24 servant doctrine in any respect other than that described in

1 subsection F of this section. Nothing in ~~this act~~ the
2 Administrative Workers' Compensation Act shall be construed to
3 relieve the employer from any other penalty provided for in ~~this act~~
4 the Administrative Workers' Compensation Act for failure to secure
5 the payment of compensation under ~~this act~~ the Administrative
6 Workers' Compensation Act.

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

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

19 SECTION 4. AMENDATORY Section 46, Chapter 208, O.S.L.
20 2013, as amended by Section 18, Chapter 476, O.S.L. 2019 (85A O.S.
21 Supp. 2019, Section 46), is amended to read as follows:

22 Section 46. A. An injured employee who is entitled to receive
23 permanent partial disability compensation under Section 45 of this
24 title shall receive compensation for each part of the body in

1 accordance with the number of weeks for the scheduled loss set forth
2 below.

3 1. Arm amputated at the elbow, or between the elbow and
4 shoulder, two hundred seventy-five (275) weeks;

5 2. Arm amputated between the elbow and wrist, two hundred
6 twenty (220) weeks;

7 3. Leg amputated at the knee, or between the knee and the hip,
8 two hundred seventy-five (275) weeks;

9 4. Leg amputated between the knee and the ankle, two hundred
10 twenty (220) weeks;

11 5. Hand amputated, two hundred twenty (220) weeks;

12 6. Thumb amputated, sixty-six (66) weeks;

13 7. First finger amputated, thirty-nine (39) weeks;

14 8. Second finger amputated, thirty-three (33) weeks;

15 9. Third finger amputated, twenty-two (22) weeks;

16 10. Fourth finger amputated, seventeen (17) weeks;

17 11. Foot amputated, two hundred twenty (220) weeks;

18 12. Great toe amputated, thirty-three (33) weeks;

19 13. Toe other than great toe amputated, eleven (11) weeks;

20 14. Eye enucleated, in which there was useful vision, two
21 hundred seventy-five (275) weeks;

22 15. Loss of hearing of one ear, one hundred ten (110) weeks;

23 16. Loss of hearing of both ears, three hundred thirty (330)
24 weeks; and

1 17. Loss of one testicle, fifty-three (53) weeks; loss of both
2 testicles, one hundred fifty-eight (158) weeks.

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

11 C. Other cases: In cases in which the Workers' Compensation
12 Commission finds an injury to a part of the body not specifically
13 covered by the foregoing provisions of this section, the employee
14 may be entitled to compensation for permanent partial disability.
15 The compensation ordered paid shall be seventy percent (70%) of the
16 employee's average weekly wage, not to exceed Three Hundred Fifty
17 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars
18 (\$360.00) on July 1, 2021, for the number of weeks which the partial
19 disability of the employee bears to ~~three hundred fifty (350)~~ three
20 hundred sixty (360) weeks.

21 D. 1. Compensation for amputation of the first phalange of a
22 digit shall be one-half (1/2) of the compensation for the amputation
23 of the entire digit.

1 2. Compensation for amputation of more than one phalange of a
2 digit shall be the same as for amputation of the entire digit.

3 E. 1. Compensation for the permanent loss of eighty percent
4 (80%) or more of the vision of an eye shall be the same as for the
5 loss of an eye.

6 2. In all cases of permanent loss of vision, the use of
7 corrective lenses may be taken into consideration in evaluating the
8 extent of loss of vision.

9 F. Compensation for amputation or loss of use of two or more
10 digits or one or more phalanges of two or more digits of a hand or a
11 foot may be proportioned to the total loss of use of the hand or the
12 foot occasioned thereby but shall not exceed the compensation for
13 total loss of a hand or a foot.

14 G. Compensation for permanent total loss of use of a member
15 shall be the same as for amputation of the member.

16 H. The sum of all permanent partial disability awards,
17 excluding awards against the Multiple Injury Trust Fund, shall not
18 exceed ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

19 SECTION 5. AMENDATORY Section 80, Chapter 208, O.S.L.
20 2013, as amended by Section 30, Chapter 476, O.S.L. 2019 (85A O.S.
21 Supp. 2019, Section 80), is amended to read as follows:

22 Section 80. A. A final order for permanent disability is a
23 final adjudication of all issues pending in the claim unless
24 reserved in the order or by operation of law. Except where a joint

1 petition settlement has been approved, the Workers' Compensation
2 Commission may review any compensation judgment, award, or decision.
3 Such review may be done upon application for a change of condition
4 for the worse at any time within six (6) months from the date of the
5 last order in which monetary benefits were awarded or active medical
6 treatment was provided, on the Commission's own motion or on the
7 application of any party in interest, and unless filed within such
8 period of time shall be forever barred. On review, the Commission
9 may make a judgment or award terminating, continuing, decreasing, or
10 increasing for the future the compensation previously awarded,
11 subject to the maximum limits provided for in this title. An order
12 denying an application to reopen a claim shall not extend the period
13 of time set out in this title for reopening the claim. A failure to
14 comply with a medical treatment plan ordered by the Commission shall
15 bar the reopening of a claim. An application for a finding of a
16 change of condition for the better may be filed at any time for good
17 cause shown.

18 B. The review and subsequent award shall be made in accordance
19 with the procedure prescribed in Sections 69 through 78 of this
20 title. No review shall affect any compensation paid under a prior
21 order, judgment or award.

22 C. The Commission may correct any clerical error in any
23 compensation judgment or award within one (1) year from the date of
24 its issuance.

1 D. Aging and the effects of aging on a compensable injury are
2 not to be considered in determining whether there has been a change
3 in physical condition. Aging or the effect of aging on a
4 compensable injury shall not be considered in determining permanent
5 disability under this section or any other section in ~~this act~~ the
6 Administrative Workers' Compensation Act.

7 SECTION 6. This act shall become effective November 1, 2020.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
9 February 25, 2020 - DO PASS AS AMENDED
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