

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 738

By: Sykes

4
5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Sections 3, 7, 18, 45, as amended by Section 2,
9 Chapter 390, O.S.L. 2015, 46, 56 and 62, Chapter 208,
10 O.S.L. 2013 (85A O.S. Supp. 2016, Sections 3, 7, 18,
11 45, 46, 56 and 62), which relate to the
12 Administrative Workers' Compensation Act; clarifying
13 applicability of act; modifying jurisdictional
14 requirement for certain claims; establishing
15 liability for damages for certain violations;
16 specifying burden of proof for certain violations;
17 limiting certain exemplary or punitive damage awards;
18 expanding methods of providing certain notice;
19 modifying grounds for termination of temporary total
20 disability awards; modifying compensation for
21 temporary partial disability awards; modifying
22 requirements for award of permanent partial
23 disability; modifying calculation for specified
24 permanent partial disability; providing employer
options regarding treating physicians; clarifying
time limit on injections; updating statutory
reference; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 208, O.S.L.
2013 (85A O.S. Supp. 2016, Section 3), is amended to read as
follows:

1 Section 3. A. Every employer ~~and every employee, unless~~
2 ~~otherwise specifically provided in this act,~~ shall be subject and
3 bound to the provisions of the Administrative Workers' Compensation
4 Act shall pay or provide benefits according to the provisions of
5 this act for the accidental injury or death of an employee arising
6 out of and in the course of his or her employment, without regard to
7 fault for such injury, if the employee's contract of employment was
8 made or if the injury occurred within this state. If an employee
9 makes claim for an injury in another jurisdiction and a final
10 adjudication is entered in the case, the employee is precluded from
11 his or her right of action under the Administrative Workers'
12 Compensation Act of this state. If the employee brings an action in
13 this state prior to a final adjudication in another jurisdiction,
14 any receipt of benefits in the other jurisdiction shall not bar the
15 action in this state; provided, however, in no event shall the
16 Workers' Compensation Commission grant benefits that duplicate those
17 paid by the employer or insurance carrier in the other jurisdiction.
18 ~~However, nothing~~ Nothing in this act shall be construed to conflict
19 with any valid Act of Congress governing the liability of employers
20 for injuries received by their employees.

21 B. The State of Oklahoma accepts the provisions of the Acts of
22 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
23 Section 290, and hereby extends the territorial jurisdiction of the
24 Administrative Workers' Compensation Act to all lands and premises

1 within the exterior boundaries of this state which the Government of
2 the United States of America owns or holds by deed or act of
3 cession, and to all purchases, projects, buildings, constructions,
4 improvements and property within the exterior boundaries of this
5 state belonging to the Government of the United States of America,
6 in the same way and to the same extent as if the premises were under
7 the exclusive jurisdiction of this state, subject only to the
8 limitations placed thereon by the Acts of Congress.

9 C. This act shall apply only to claims for injuries and death
10 based on accidents which occur on or after ~~the effective date of~~
11 ~~this act~~ February 1, 2014.

12 ~~C.~~ D. The Workers' Compensation Code in effect before ~~the~~
13 ~~effective date of this act~~ February 1, 2014, shall govern all rights
14 in respect to claims for injuries and death based on accidents
15 occurring before ~~the effective date of this act~~ February 1, 2014.

16 SECTION 2. AMENDATORY Section 7, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as
18 follows:

19 Section 7. A. An employer may not discriminate or retaliate
20 against an employee when the employee has in good faith:

21 1. Filed a claim under ~~this act~~ the Administrative Workers'
22 Compensation Act;

23 2. Retained a lawyer for representation regarding a claim under
24 this act;

1 3. Instituted or caused to be instituted any proceeding under
2 the provisions of ~~this act~~ the Administrative Workers' Compensation
3 Act; or

4 4. Testified or is about to testify in any proceeding under the
5 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

6 ~~B. The Commission shall have exclusive jurisdiction to hear and~~
7 ~~decide claims based on subsection A of this section.~~

8 ~~C. If the Commission determines that the defendant violated~~
9 ~~subsection A of this section, the Commission may award the employee~~
10 ~~back pay up to a maximum of One Hundred Thousand Dollars~~

11 ~~(\$100,000.00)~~ If a district court of this state determines that an
12 employer violated a provision of this section, such employer shall

13 be liable for reasonable compensatory damages suffered by an

14 employee as a result of the violation. The employee shall have the

15 burden of proof to show such violation by a preponderance of the

16 evidence. Interim earnings or amounts earnable with reasonable

17 diligence by the person discriminated against shall reduce the back

18 pay compensatory damages otherwise allowable. Exemplary or punitive

19 damage awards made pursuant to this section shall not exceed One

20 Hundred Thousand Dollars (\$100,000.00).

21 ~~D. C.~~ The prevailing party shall be entitled to recover costs
22 and a reasonable attorney fee.

23 ~~E. D.~~ No employer may discharge an employee during a period of
24 temporary total disability for the sole reason of being absent from

1 work or for the purpose of avoiding payment of temporary total
2 disability benefits to the injured employee.

3 ~~F.~~ E. Notwithstanding any other provision of this section, an
4 employer shall not be required to rehire or retain an employee who,
5 after temporary total disability has been exhausted, is determined
6 by a physician to be physically unable to perform his or her
7 assigned duties, or whose position is no longer available.

8 ~~G.~~ F. This section shall not be construed as establishing an
9 exception to the employment at will doctrine.

10 ~~H.~~ G. The remedies provided for in this section shall be
11 exclusive with respect to any claim arising out of the conduct
12 described in subsection A of this section.

13 SECTION 3. AMENDATORY Section 18, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 18), is amended to read as
15 follows:

16 Section 18. A. No hospital, physician, or other health care
17 provider shall bill or attempt to collect any fee or any portion of
18 a fee for services rendered to an employee due to a work-related
19 injury or report to any credit-reporting agency any failure of the
20 employee to make the payment, when a claim for compensation has been
21 filed under this act and the hospital, physician, or health care
22 provider has received actual notice given in writing by the employee
23 or the employee's representative. Actual notice shall be deemed
24 received by the hospital, physician, or health care provider five

1 (5) days after mailing by certified mail or sending by facsimile,
2 electronic mail or other electronic means with confirmation of
3 receipt by the employee or his or her representative to the
4 hospital, physician, or health care provider.

5 B. The notice shall include:

- 6 1. The name of the employer;
- 7 2. The name of the insurer, if known;
- 8 3. The name of the employee receiving the services;
- 9 4. The general nature of the injury, if known; and
- 10 5. Where a claim has been filed, the claim number, if known.

11 C. When an injury or bill is found to be noncompensable under
12 this act, the hospital, physician, or other health care provider
13 shall be entitled to pursue the employee for any unpaid portion of
14 the fee or other charges for authorized services provided to the
15 employee. Any applicable statute of limitations for an action for
16 the fees or other charges shall be tolled from the time notice is
17 given to the hospital, physician, or other health care provider
18 until a determination of noncompensability in regard to the injury
19 which is the basis of the services is made, or if there is an
20 appeal, until a final determination of noncompensability is rendered
21 and all appeal deadlines have passed.

22 D. This section shall not ~~avoid~~ void, modify, or amend any
23 other section or subsection of this ~~act~~ title.

24

1 E. An order by the Commission under this section shall stay all
2 proceedings for collection.

3 SECTION 4. AMENDATORY Section 45, Chapter 208, O.S.L.
4 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
5 Supp. 2016, Section 45), is amended to read as follows:

6 Section 45. A. Temporary Total Disability. 1. If the injured
7 employee is temporarily unable to perform his or her job or any
8 alternative work offered by the employer, he or she shall be
9 entitled to receive compensation equal to seventy percent (70%) of
10 the injured employee's average weekly wage, but not to exceed
11 seventy percent (70%) of the state average weekly wage, for one
12 hundred four (104) weeks. Provided, there shall be no payment for
13 the first three (3) days of the initial period of temporary total
14 disability. If an administrative law judge finds that a
15 consequential injury has occurred and that additional time is needed
16 to reach maximum medical improvement, temporary total disability may
17 continue for a period of not more than an additional fifty-two (52)
18 weeks. Such finding shall be based upon a showing of medical
19 necessity by clear and convincing evidence.

20 2. When the injured employee is released from active medical
21 treatment by the treating physician for all body parts found by the
22 Commission to be injured, or in the event that the employee, without
23 a valid excuse, misses ~~three~~ two consecutive medical treatment
24 appointments as prescribed under Section 57 of this title, fails to

1 comply with medical orders of the treating physician, or otherwise
2 abandons medical care, the employer shall be entitled to terminate
3 temporary total disability by notifying the employee, or if
4 represented, his or her counsel. If, however, an objection to the
5 termination is filed by the employee within ten (10) days of
6 termination, the Commission shall set the matter within twenty (20)
7 days for a determination if temporary total disability compensation
8 shall be reinstated. The temporary total disability shall remain
9 terminated unless the employee proves the existence of a valid
10 excuse for his or her failure to comply with medical orders of the
11 treating physician or his or her abandonment of medical care. The
12 administrative law judge may appoint an independent medical examiner
13 to determine if further medical treatment is reasonable and
14 necessary. The independent medical examiner shall not provide
15 treatment to the injured worker, unless agreed upon by the parties.

16 B. Temporary Partial Disability.

17 1. If the injured employee is temporarily unable to perform his
18 or her job, but may perform alternative work offered by the
19 employer, he or she shall be entitled to receive compensation equal
20 to ~~the greater of~~ seventy percent (70%) of the difference between
21 the injured employee's average weekly wage before the injury and his
22 or her weekly wage for performing alternative work after the injury,
23 but only if his or her weekly wage for performing the alternative
24 work is less than the temporary total disability rate. However, the

1 injured employee's actual earnings plus temporary partial disability
2 shall not exceed the temporary total disability rate.

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

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

8 C. Permanent Partial Disability.

9 1. A permanent partial disability award or combination of
10 awards granted an injured worker may not exceed a permanent partial
11 disability rating of one hundred percent (100%) to any body part or
12 to the body as a whole. The determination of permanent partial
13 disability shall be the responsibility of the Commission through its
14 administrative law judges. Any claim by an employee for
15 compensation for permanent partial disability must be supported by
16 competent medical testimony of a medical doctor, osteopathic
17 physician, or chiropractor, and shall be supported by objective
18 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.

19 The opinion of the physician shall include employee's percentage of
20 permanent partial disability and whether or not the disability is
21 job-related and caused by the accidental injury or occupational
22 disease. A physician's opinion of the nature and extent of
23 permanent partial disability to parts of the body ~~other than~~
24 ~~scheduled members~~ must be based solely on criteria established by

1 the current edition of the American Medical Association's "Guides to
2 the Evaluation of Permanent Impairment". A copy of any written
3 evaluation shall be sent to both parties within seven (7) days of
4 issuance. Medical opinions addressing compensability and permanent
5 disability must be stated within a reasonable degree of medical
6 certainty. Any party may submit the report of an evaluating
7 physician.

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

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

18 4. In cases of permanent partial disability, the compensation
19 shall be seventy percent (70%) of the employee's average weekly
20 wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per
21 week, for a term not to exceed a total of three hundred fifty (350)
22 weeks for the body as a whole.

23 5. ~~Except pursuant to settlement agreements entered into by the~~
24 ~~employer and employee, payment of a permanent partial disability~~

1 ~~award shall be deferred and held in reserve by the employer or~~
2 ~~insurance company if the employee has reached maximum medical~~
3 ~~improvement and has been released to return to work by his or her~~
4 ~~treating physician, and then returns to his pre-injury or equivalent~~
5 ~~job for a term of weeks determined by dividing the total dollar~~
6 ~~value of the award by seventy percent (70%) of the employee's~~
7 ~~average weekly wage.~~

8 a. ~~The amount of the permanent partial disability award~~
9 ~~shall be reduced by seventy percent (70%) of the~~
10 ~~employee's average weekly wage for each week he works~~
11 ~~in his pre-injury or equivalent job.~~

12 b. ~~If, for any reason other than misconduct as defined in~~
13 ~~Section 2 of this act, the employer terminates the~~
14 ~~employee or the position offered is not the pre-injury~~
15 ~~or equivalent job, the remaining permanent partial~~
16 ~~disability award shall be paid in a lump sum. If the~~
17 ~~employee is discharged for misconduct, the employer~~
18 ~~shall have the burden to prove that the employee~~
19 ~~engaged in misconduct.~~

20 c. ~~If the employee refuses an offer to return to his pre-~~
21 ~~injury or equivalent job, the permanent partial~~
22 ~~disability award shall continue to be deferred and~~
23 ~~shall be reduced by seventy percent (70%) of the~~
24

1 ~~employee's average weekly wage for each week he~~
2 ~~refuses to return to his pre-injury or equivalent job.~~

3 ~~d. Attorney fees for permanent partial disability awards,~~
4 ~~as approved by the Commission, shall be calculated~~
5 ~~based upon the total permanent partial disability~~
6 ~~award and paid in full at the time of the deferral.~~

7 ~~e. Assessments pursuant to Sections 31, 98, 112 and 165~~
8 ~~of this act shall be calculated based upon the amount~~
9 ~~of the permanent partial disability award and shall be~~
10 ~~paid at the time of the deferral.~~

11 ~~6.~~ Previous Disability: The fact that an employee has suffered
12 previous disability or received compensation therefor shall not
13 preclude the employee from compensation for a later accidental
14 personal injury or occupational disease. In the event there exists
15 a previous permanent partial disability, including a previous non-
16 work-related injury or condition which produced permanent partial
17 disability and the same is aggravated or accelerated by an
18 accidental personal injury or occupational disease, compensation for
19 permanent partial disability shall be only for such amount as was
20 caused by such accidental personal injury or occupational disease
21 and no additional compensation shall be allowed for the preexisting
22 disability ~~or impairment~~. Any such reduction shall not apply to
23 temporary total disability, nor shall it apply to compensation for
24 medical treatment.

1 a. If workers' compensation benefits have previously been
2 awarded through settlement or judicial or
3 administrative determination in Oklahoma, the
4 percentage basis of the prior settlement or award
5 shall conclusively establish the amount of permanent
6 partial disability determined to be preexisting. If
7 workers' compensation benefits have not previously
8 been awarded through settlement or judicial or
9 administrative determination in Oklahoma, the amount
10 of preexisting permanent partial disability shall be
11 established by competent evidence.

12 b. In all cases, the applicable reduction shall be
13 calculated as follows:

14 (1) if the preexisting ~~impairment~~ disability is the
15 result of injury sustained while working for the
16 employer against whom workers' compensation
17 benefits are currently being sought, any award of
18 compensation shall be reduced by the current
19 dollar value attributable under the
20 Administrative Workers' Compensation Act to the
21 percentage of permanent partial disability
22 determined to be preexisting. The current dollar
23 value shall be calculated by multiplying the
24 percentage of preexisting permanent partial

1 disability by the compensation rate in effect on
2 the date of the accident or injury against which
3 the reduction will be applied, and

4 (2) in all other cases, the employer against whom
5 benefits are currently being sought shall be
6 entitled to a credit for the percentage of
7 preexisting permanent partial disability.

8 ~~7.~~ 6. No payments on any permanent partial disability order
9 shall begin until payments on any preexisting permanent partial
10 disability orders have been completed.

11 ~~8.~~ 7. The whole body shall represent a maximum of three hundred
12 fifty (350) weeks.

13 ~~9.~~ ~~The permanent partial disability rate of compensation for~~
14 ~~amputation or permanent total loss of use of a scheduled member~~
15 ~~specified in Section 46 of this act shall be seventy percent (70%)~~
16 ~~of the employee's average weekly wage, not to exceed Three Hundred~~
17 ~~Twenty three Dollars (\$323.00), multiplied by the number of weeks~~
18 ~~set forth for the member in Section 46 of this act, regardless of~~
19 ~~whether the injured employee is able to return to his or her pre-~~
20 ~~injury or equivalent job.~~

21 ~~10.~~ 8. An injured employee who is eligible for permanent
22 partial disability under this subsection shall be entitled to
23 receive vocational rehabilitation services provided by a technology
24 center or public secondary school offering vocational-technical

1 education courses, or a member institution of The Oklahoma State
2 System of Higher Education, which shall include retraining and job
3 placement to restore the employee to gainful employment. Vocational
4 rehabilitation services or training shall not extend for a period of
5 more than fifty-two (52) weeks.

6 D. Permanent Total Disability.

7 1. In case of total disability adjudged to be permanent,
8 seventy percent (70%) of the employee's average weekly wages, but
9 not in excess of the state's average weekly wage, shall be paid to
10 the employee during the continuance of the disability until such
11 time as the employee reaches the age of maximum Social Security
12 retirement benefits or for a period of fifteen (15) years, whichever
13 is longer. In the event the claimant dies of causes unrelated to
14 the injury or illness, benefits shall cease on the date of death.
15 Provided, however, any person entitled to revive the action shall
16 receive a one-time lump-sum payment equal to twenty-six (26) weeks
17 of weekly benefits for permanent total disability awarded the
18 claimant. If more than one person is entitled to revive the claim,
19 the lump-sum payment shall be evenly divided between or among such
20 persons. In the event the Commission awards both permanent partial
21 disability and permanent total disability benefits, the permanent
22 total disability award shall not be due until the permanent partial
23 disability award is paid in full. If otherwise qualified according
24 to the provisions of ~~this act~~ the Administrative Workers'

1 Compensation Act, permanent total disability benefits may be awarded
2 to an employee who has exhausted the maximum period of temporary
3 total disability even though the employee has not reached maximum
4 medical improvement.

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

13 E. 1. The Workers' Compensation Commission shall hire or
14 contract for a Vocational Rehabilitation Director to oversee the
15 vocational rehabilitation program of the Commission.

16 2. The Vocational Rehabilitation Director shall help injured
17 workers return to the work force. If the injured employee is unable
18 to return to his or her pre-injury or equivalent position due to
19 permanent restrictions as determined by the treating physician, upon
20 the request of either party, the Vocational Rehabilitation Director
21 shall determine if it is appropriate for a claimant to receive
22 vocational rehabilitation training or services, and will oversee
23 such training. If appropriate, the Vocational Rehabilitation
24 Director shall issue administrative orders, including, but not

1 limited to, an order for a vocational rehabilitation evaluation for
2 any injured employee unable to work for at least ninety (90) days.
3 In addition, the Vocational Rehabilitation Director may assign
4 injured workers to vocational rehabilitation counselors for
5 coordination of recommended services. The cost of the services
6 shall be paid by the employer. All administrative orders are
7 subject to appeal to the full Commission.

8 3. There shall be a presumption in favor of ordering vocational
9 rehabilitation services or training for an eligible injured employee
10 under the following circumstances:

- 11 a. if the employee's occupation is truck driver or
12 laborer and the medical condition is traumatic brain
13 injury, stroke or uncontrolled vertigo,
- 14 b. if the employee's occupation is truck driver or
15 laborer performing high-risk tasks and the medical
16 condition is seizures,
- 17 c. if the employee's occupation is manual laborer and the
18 medical condition is bilateral wrist fusions,
- 19 d. if the employee's occupation is assembly-line worker
20 and the medical condition is radial head fracture with
21 surgical excision,
- 22 e. if the employee's occupation is heavy laborer and the
23 medical condition is myocardial infarction with
24 congestive heart failure,

- 1 f. if the employee's occupation is heavy manual laborer
2 and the medical condition is multilevel neck or back
3 fusions greater than two levels,
- 4 g. if the employee's occupation is laborer performing
5 overhead work and the medical condition is massive
6 rotator cuff tears, with or without surgery,
- 7 h. if the employee's occupation is heavy laborer and the
8 medical condition is recurrent inguinal hernia
9 following unsuccessful surgical repair,
- 10 i. if the employee's occupation is heavy manual laborer
11 and the medical condition is total knee replacement or
12 total hip replacement,
- 13 j. if the employee's occupation is roofer and the medical
14 condition is calcaneal fracture, medically or
15 surgically treated,
- 16 k. if the employee's occupation is laborer of any kind
17 and the medical condition is total shoulder
18 replacement,
- 19 l. if the employee's occupation is laborer and the
20 medical condition is amputation of a hand, arm, leg,
21 or foot,
- 22 m. if the employee's occupation is laborer and the
23 medical condition is tibial plateau fracture, pilon
24 fracture,

- n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,
- o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or
- p. if the employee's occupation is laborer and the medical condition is 3-, 4-, or 5-level positive discogram of the cervical spine or lumbar spine, medically treated.

4. Upon the request of either party, or by order of an administrative law judge, the Vocational Rehabilitation Director shall assist the Workers' Compensation Commission in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the administrative law judge shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be

1 deducted from any award of benefits to the employee which remains
2 unpaid by the employer. Upon receipt of such report, and after
3 affording all parties an opportunity to be heard, the administrative
4 law judge shall order that any rehabilitation services or training,
5 recommended in the report, or such other rehabilitation services or
6 training as the administrative law judge may deem necessary,
7 provided the employee elects to receive such services, shall be
8 provided at the expense of the employer. Except as otherwise
9 provided in this subsection, refusal to accept rehabilitation
10 services by the employee shall in no way diminish any benefits
11 allowable to an employee.

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

21 6. Vocational rehabilitation services or training shall not
22 extend for a period of more than fifty-two (52) weeks. A request
23 for vocational rehabilitation services or training shall be filed
24 with the Commission by an interested party not later than sixty (60)

1 days from the date of receiving permanent restrictions that prevent
2 the injured employee from returning to his or her pre-injury or
3 equivalent position.

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

11 8. During the period when an employee is actively and in good
12 faith being evaluated or participating in a retraining or job
13 placement program for purposes of evaluating permanent total
14 disability status, the employee shall be entitled to receive
15 benefits at the same rate as the employee's temporary total
16 disability benefits for an additional fifty-two (52) weeks. All
17 tuition related to vocational rehabilitation services shall be paid
18 by the employer or the employer's insurer on a periodic basis
19 directly to the facility providing the vocational rehabilitation
20 services or training to the employee. The employer or employer's
21 insurer may deduct the amount paid for tuition from compensation
22 awarded to the employee.

23 F. Disfigurement.
24

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

5 2. No award for disfigurement shall be entered until twelve
6 (12) months after the injury.

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

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

17 SECTION 5. AMENDATORY Section 46, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as
19 follows:

20 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to
21 paragraph 4 of subsection C of Section 45 of this title, an injured
22 employee who is entitled to receive permanent partial disability
23 compensation under Section 45 of this act suffers amputation or
24 permanent total loss of use of a scheduled member shall receive

1 compensation for each part of the body ~~in accordance with~~ equal to
2 seventy percent (70%) of the employee's average weekly wage, not to
3 exceed Three Hundred Twenty-three Dollars (\$323.00) multiplied by
4 the number of weeks for the scheduled ~~loss~~ member set forth ~~below.~~
5 as follows:

- 6 1. Arm amputated at the elbow, or between the elbow and
7 shoulder, two hundred seventy-five (275) weeks;
- 8 2. Arm amputated between the elbow and wrist, two hundred
9 twenty (220) weeks;
- 10 3. Leg amputated at the knee, or between the knee and the hip,
11 two hundred seventy-five (275) weeks;
- 12 4. Leg amputated between the knee and the ankle, two hundred
13 twenty (220) weeks;
- 14 5. Hand amputated, two hundred twenty (220) weeks;
- 15 6. Thumb amputated, sixty-six (66) weeks;
- 16 7. First finger amputated, thirty-nine (39) weeks;
- 17 8. Second finger amputated, thirty-three (33) weeks;
- 18 9. Third finger amputated, twenty-two (22) weeks;
- 19 10. Fourth finger amputated, seventeen (17) weeks;
- 20 11. Foot amputated, two hundred twenty (220) weeks;
- 21 12. Great toe amputated, thirty-three (33) weeks;
- 22 13. Toe other than great toe amputated, eleven (11) weeks;
- 23 14. Eye enucleated, in which there was useful vision, two
24 hundred seventy-five (275) weeks;

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

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

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

6 B. The permanent partial disability rate of compensation for
7 amputation or permanent total loss of use of a scheduled member
8 specified in this section shall be seventy percent (70%) of the
9 employee's average weekly wage, not to exceed Three Hundred Twenty-
10 three Dollars (\$323.00), multiplied by the number of weeks as set
11 forth in this section, regardless of whether or not the injured
12 employee is able to return to his or her pre-injury job.

13 C. Other cases: In cases in which the Commission finds an
14 injury ~~to a part of the body~~ not specifically covered by the
15 foregoing provisions of this section, the employee may be entitled
16 to compensation for permanent partial disability. The compensation
17 ordered paid shall be seventy percent (70%) of the employee's
18 average weekly wage, not to exceed Three Hundred Twenty-three
19 Dollars (\$323.00) for the number of weeks which the partial
20 disability of the employee bears to three hundred fifty (350) 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) weeks.

19 SECTION 6. AMENDATORY Section 56, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 56), is amended to read as
21 follows:

22 Section 56. A. If the employer has previously contracted with
23 a certified workplace medical plan, the employer shall select for
24 the injured employee a treating physician from the physicians listed

1 within the network of the certified workplace medical plan. The
2 employee may apply for a change of physician by utilizing the
3 dispute resolution process set out in the certified workplace
4 medical plan on file with the State Department of Health.

5 B. If the employer is not covered by a certified workplace
6 medical plan, the employer shall select the treating physician. The
7 Commission on application of the employee shall order one change of
8 treating physician. Upon the Commission's granting of the
9 application, the employer shall provide a list of three physicians
10 from whom the employee may select the replacement. The employer may
11 identify physicians within the same practice, facility or hospital
12 as the treating physician. The only requirement for the list of
13 three physicians is that they be licensed and accredited to perform
14 the necessary treatment.

15 SECTION 7. AMENDATORY Section 62, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as
17 follows:

18 Section 62. A. Notwithstanding the provisions of Section 45 of
19 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
20 injury, temporary total disability compensation shall not exceed
21 eight (8) weeks, regardless of the number of parts of the body to
22 which there is a nonsurgical soft tissue injury. An employee who is
23 treated with an injection ~~or injections~~ shall be entitled to an
24 extension of an additional eight (8) weeks total, regardless of the

1 number of injections. An employee who has been recommended by a
2 treating physician for surgery for a soft tissue injury may petition
3 the Workers' Compensation Commission for one extension of temporary
4 total disability compensation and the Commission may order an
5 extension, not to exceed sixteen (16) additional weeks. If the
6 surgery is not performed within thirty (30) days of the approval of
7 the surgery by the employer, its insurance carrier, or an order of
8 the Commission authorizing the surgery, and the delay is caused by
9 the employee acting in bad faith, the benefits for the extension
10 period shall be terminated and the employee shall reimburse the
11 employer any temporary total disability compensation he or she
12 received beyond eight (8) weeks. An epidural steroid injection, or
13 any procedure of the same or similar physical invasiveness, shall
14 not be considered surgery.

15 B. For purposes of this section, "soft tissue injury" means
16 damage to one or more of the tissues that surround bones and joints.
17 Soft tissue injury includes, but is not limited to, sprains,
18 strains, contusions, tendonitis and muscle tears. Cumulative trauma
19 is to be considered a soft tissue injury. Soft tissue injury does
20 not include any of the following:

21 1. Injury to or disease of the spine, spinal discs, spinal
22 nerves or spinal cord, where corrective surgery is performed;

23 2. Brain or closed-head injury as evidenced by:

24 a. sensory or motor disturbances,

- b. communication disturbances,
- c. complex integrated disturbances of cerebral function,
- d. episodic neurological disorders, or
- e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph; or

3. Any joint replacement.

SECTION 8. This act shall become effective November 1, 2017.

56-1-383 TEK 1/20/2017 12:11:06 AM