

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2276 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Josh West

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 FLOOR SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 2276

By: West (Josh) of the House

and

Thompson of the Senate

7
8 FLOOR SUBSTITUTE

9 An Act relating to Workers' Compensation; amending
10 Section 2, Chapter 208, O.S.L. 2013, as last amended
11 by Section 1, Chapter 476, O.S.L. 2019 (85A O.S.
12 Supp. 2020, Section 2), which relates to definitions;
13 modifying definitions; amending Section 13, Chapter
14 208, O.S.L. 2013 (85A O.S. Supp. 2020, Section 13),
15 which relates to mental injury or illness; modifying
16 situations in which mental injury or illness is a
17 compensable injury; prescribing procedures related to
18 benefits for certain first responders; requiring
19 program for treatment of Post Traumatic Stress
20 Disorder; providing an effective date; and declaring
21 an emergency.

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

23 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
24 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019 (85A
O.S. Supp. 2020, Section 2), is amended to read as follows:

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

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

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

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

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

1 regularly obtains continuing education hours to maintain
2 certification:

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

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

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

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

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

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

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

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

23 (2) occurred at a specifically identifiable time and
24 place,

- 1 (3) occurred by chance or from unknown causes, or
2 (4) was independent of sickness, mental incapacity,
3 bodily infirmity or any other cause.

4 b. "Compensable injury" means Post Traumatic Stress
5 Disorder arising out of and in the course of
6 employment of a First Responder as defined herein and
7 as a result of responding to an emergency.

8 c. "Compensable injury" does not include:

- 9 (1) injury to any active participant in assaults or
10 combats which, although they may occur in the
11 workplace, are the result of non-employment-
12 related hostility or animus of one, both, or all
13 of the combatants and which assault or combat
14 amounts to a deviation from customary duties;
15 provided, however, injuries caused by horseplay
16 shall not be considered to be compensable
17 injuries, except for innocent victims,
- 18 (2) injury incurred while engaging in or performing
19 or as the result of engaging in or performing any
20 recreational or social activities for the
21 employee's personal pleasure,
- 22 (3) injury which was inflicted on the employee at a
23 time when employment services were not being
24

1 performed or before the employee was hired or
2 after the employment relationship was terminated,
3 (4) injury if the accident was caused by the use of
4 alcohol, illegal drugs, or prescription drugs
5 used in contravention of physician's orders. If
6 a biological specimen is collected within twenty-
7 four (24) hours of the employee being injured or
8 reporting an injury, or if at any time after the
9 injury a biological specimen is collected by the
10 Oklahoma Office of the Chief Medical Examiner if
11 the injured employee does not survive for at
12 least twenty-four (24) hours after the injury and
13 the employee tests positive for intoxication, an
14 illegal controlled substance, or a legal
15 controlled substance used in contravention to a
16 treating physician's orders, or refuses to
17 undergo the drug and alcohol testing, there shall
18 be a rebuttable presumption that the injury was
19 caused by the use of alcohol, illegal drugs, or
20 prescription drugs used in contravention of
21 physician's orders. This presumption may only be
22 overcome if the employee proves by clear and
23 convincing evidence that his or her state of
24

1 intoxication had no causal relationship to the
2 injury,

- 3 (5) any strain, degeneration, damage or harm to, or
4 disease or condition of, the eye or
5 musculoskeletal structure or other body part
6 resulting from the natural results of aging,
7 osteoarthritis, arthritis, or degenerative
8 process including, but not limited to,
9 degenerative joint disease, degenerative disc
10 disease, degenerative
11 spondylosis/spondylolisthesis and spinal
12 stenosis, or
- 13 (6) any preexisting condition except when the
14 treating physician clearly confirms an
15 identifiable and significant aggravation incurred
16 in the course and scope of employment.

17 ~~e.~~ d. A compensable injury shall be established by medical
18 evidence supported by objective findings as defined in
19 paragraph ~~31~~ 33 of this section.

20 ~~d.~~ e. The injured employee shall prove by a preponderance of
21 the evidence that he or she has suffered a compensable
22 injury.

23 ~~e.~~ f. Benefits shall not be payable for a condition which
24 results from a non-work-related independent

1 intervening cause following a compensable injury which
2 causes or prolongs disability, aggravation, or
3 requires treatment. A non-work-related independent
4 intervening cause does not require negligence or
5 recklessness on the part of a claimant.

6 ~~f.~~ g. An employee who suffers a compensable injury shall be
7 entitled to receive compensation as prescribed in this
8 act. Notwithstanding other provisions of law, if it
9 is determined that a compensable injury did not occur,
10 the employee shall not be entitled to compensation
11 under this act;

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

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

22 12. "Continuing medical maintenance" means medical treatment
23 that is reasonable and necessary to maintain claimant's condition
24 resulting from the compensable injury or illness after reaching

1 maximum medical improvement. Continuing medical maintenance shall
2 not include diagnostic tests, surgery, injections, counseling,
3 physical therapy, or pain management devices or equipment;

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

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

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
24

1 method, or any combination thereof, with or without towing a
2 privately owned vehicle;

3 18. "Emergency Medical Technician (EMT)" means a person who
4 holds a license as an emergency medical technician, an intermediate
5 or advanced emergency medical technician or a paramedic issued by
6 the Oklahoma State Department of Health to perform emergency medical
7 services in accordance with the Oklahoma Emergency Response Systems
8 Development Act and the rules and standards promulgated by the State
9 Commissioner of Health;

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

1 Travel by a police officer, fireman, or a member of a
2 first aid or rescue squad, in responding to and
3 returning from an emergency, shall be deemed to be in
4 the course of employment.

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

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

15 (2) any person who is employed in agriculture,
16 ranching or horticulture by an employer who had a
17 gross annual payroll in the preceding calendar
18 year of less than One Hundred Thousand Dollars
19 (\$100,000.00) wages for agricultural, ranching or
20 horticultural workers, or any person who is
21 employed in agriculture, ranching or horticulture
22 who is not engaged in operation of motorized
23 machines. This exemption applies to any period
24 of time for which such employment exists,

1 irrespective of whether or not the person is
2 employed in other activities for which the
3 exemption does not apply. If the person is
4 employed for part of a year in exempt activities
5 and for part of a year in nonexempt activities,
6 the employer shall be responsible for providing
7 workers' compensation only for the period of time
8 for which the person is employed in nonexempt
9 activities,

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

12 (4) any person who is providing services in a medical
13 care or social services program, or who is a
14 participant in a work or training program,
15 administered by the Department of Human Services,
16 unless the Department is required by federal law
17 or regulations to provide workers' compensation
18 for such person. This division shall not be
19 construed to include nursing homes,

20 (5) any person employed by an employer with five or
21 fewer total employees, all of whom are related
22 within the second degree by blood or marriage to
23 the employer, all of whom are dependents living
24 in the household of the employer, or all of whom

1 are a combination of such relatives and
2 dependents. If the employer is not a natural
3 person such relative shall be related within the
4 second degree by blood or marriage to a person
5 who owns fifty percent (50%) or more of the
6 employer, or such dependent shall be in the
7 household of a person who owns fifty percent
8 (50%) or more of 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
24

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.~~ 20. "Employer" means a natural person, partnership,
16 association, 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;

3 ~~20.~~ 21. "Employment" includes work or labor in a trade,
4 business, occupation or activity carried on by an employer or any
5 authorized voluntary or uncompensated worker rendering services as a
6 firefighter, peace officer or emergency management worker;

7 ~~21.~~ 22. "Evidence-based" means expert-based, literature-
8 supported and outcomes validated by well-designed randomized trials
9 when such information is available and which uses the best available
10 evidence to support medical decision making;

11 ~~22.~~ 23. "First Responder" means one who is employed on a full-
12 time basis as a law enforcement officer, firefighter or Emergency
13 Medical Technician by a municipality, county or the State of
14 Oklahoma;

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

18 ~~23.~~ 25. "Impaired self-insurer" means a private self-insurer or
19 group self-insurance association that fails to pay its workers'
20 compensation obligations, or is financially unable to do so and is
21 the subject of any proceeding under the Federal Bankruptcy Reform
22 Act of 1978, and any subsequent amendments or is the subject of any
23 proceeding in which a receiver, custodian, liquidator,
24 rehabilitator, trustee or similar officer has been appointed by a

1 court of competent jurisdiction to act in lieu of or on behalf of
2 the self-insurer;

3 ~~24.~~ 26. "Incapacity" means inadequate strength or ability to
4 perform a work-related task;

5 ~~25.~~ 27. "Insurance Commissioner" means the Insurance
6 Commissioner of the State of Oklahoma;

7 ~~26.~~ 28. "Insurance Department" means the Insurance Department
8 of the State of Oklahoma;

9 ~~27.~~ 29. "Major cause" means more than fifty percent (50%) of
10 the 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.~~ 30. "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.~~ 31. "Medical services" means those services specified in
20 Section 50 of this title;

21 ~~30.~~ 32. "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.~~ 33.

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.~~ 34. "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.~~ 35. "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.~~ 36. "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.~~ 37 "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 38. "Post Traumatic Stress Disorder (PTSD)" shall include:

21 a. the person has been exposed to a traumatic event in
22 which both of the following have been present:

23 (1) the person experienced, witnessed or was
24 confronted with an event that involved actual or

1 threatened death or serious injury, or a threat
2 to the physical integrity of self or others, and

3 (2) the person's response involved intense fear,
4 helplessness or horror,

5 b. the traumatic event is persistently reexperienced in
6 one (or more) of the following ways:

7 (1) recurrent and intrusive distressing recollections
8 of the event, including images, thoughts or
9 perceptions,

10 (2) recurrent distressing dreams of the event,

11 (3) acting or feeling as if the traumatic event were
12 recurring (includes a sense of reliving the
13 experience, illusions, hallucinations, and
14 dissociative flashback episodes, including those
15 that occur upon awakening or when intoxicated),

16 (4) intense psychological distress at exposure to
17 internal or external cues that symbolize or
18 resemble an aspect of the traumatic event,

19 (5) physiological reactivity on exposure to internal
20 or external cues that symbolize or resemble an
21 aspect of the traumatic event,

22 c. persistent avoidance of stimuli associated with the
23 trauma and numbing of general responsiveness (not
24

1 present before the trauma), as indicated by three (or
2 more) of the following:

- 3 (1) efforts to avoid thoughts, feelings or
4 conversations associated with the trauma,
5 (2) efforts to avoid activities, places or people
6 that arouse recollections of the trauma,
7 (3) inability to recall an important aspect of the
8 trauma,
9 (4) markedly diminished interest or participation in
10 significant activities,
11 (5) feeling of detachment or estrangement from
12 others,
13 (6) restricted range of affect (e.g., unable to have
14 loving feelings), and
15 (7) sense of a foreshortened future (e.g., does not
16 expect to have a career, marriage, children or a
17 normal life span),

18 d. persistent symptoms of increased arousal (not present
19 before the trauma), as indicated by two (or more) of
20 the following:

- 21 (1) difficulty falling or staying asleep,
22 (2) irritability or outbursts of anger,
23 (3) difficulty concentrating,
24 (4) hypervigilance, and

1 (5) exaggerated startle response,

2 e. duration of the disturbance (symptoms described in
3 subparagraphs b, c and d of this paragraph) is more
4 than one (1) month, and

5 f. the disturbance causes clinically significant distress
6 or impairment in social, occupational or other
7 important areas of functioning.

8 ~~36.~~ 39. "Preexisting condition" means any illness, injury,
9 disease, or other physical or mental condition, whether or not work-
10 related, for which medical advice, diagnosis, care or treatment was
11 recommended or received preceding the date of injury;

12 ~~37.~~ 40. "Pre-injury or equivalent job" means the job that the
13 claimant was working for the employer at the time the injury
14 occurred or any other employment offered by the claimant's employer
15 that pays at least one hundred percent (100%) of the employee's
16 average weekly wage;

17 ~~38.~~ 41. "Private self-insurer" means a private employer that
18 has been authorized to self-insure its workers' compensation
19 obligations pursuant to this act, but does not include group self-
20 insurance associations authorized by this act, or any public
21 employer that self-insures pursuant to this act;

22 ~~39.~~ 42. "Prosthetic" means an artificial device used to replace
23 a part or joint of the body that is lost or injured in an accident
24 or illness covered by this act;

1 ~~40.~~ 43. "Scheduled member" or "member" means hands, fingers,
2 arms, legs, feet, toes, and eyes. In addition, for purposes of the
3 Multiple Injury Trust Fund only, "scheduled member" means hearing
4 impairment;

5 ~~41.~~ 44. "Scientifically based" involves the application of
6 rigorous, systematic, and objective procedures to obtain reliable
7 and valid knowledge relevant to medical testing, diagnoses and
8 treatment; is adequate to justify the general conclusions drawn; and
9 has been accepted by a peer-review journal or approved by a panel of
10 independent experts through a comparably rigorous, objective, and
11 scientific review;

12 ~~42.~~ 45. "State average weekly wage" means the state average
13 weekly wage determined by the Oklahoma Employment Security
14 Commission in the preceding calendar year. If such determination is
15 not available, the Commission shall determine the wage annually
16 after reasonable investigation;

17 ~~43.~~ 46. "Subcontractor" means a person, firm, corporation or
18 other legal entity hired by the general or prime contractor to
19 perform a specific task for the completion of a work-related
20 activity;

21 ~~44.~~ 47. "Surgery" does not include an injection, or the forcing
22 of fluids beneath the skin, for treatment or diagnosis;

23 ~~45.~~ 48. "Surviving spouse" means the employee's spouse by
24 reason of a legal marriage recognized by the State of Oklahoma or

1 under the requirements of a common law marriage in this state, as
2 determined by the Workers' Compensation Commission;

3 ~~46.~~ 49. "Temporary partial disability" means an injured
4 employee who is temporarily unable to perform his or her job, but
5 may perform alternative work offered by the employer;

6 ~~47.~~ 50. "Time of accident" or "date of accident" means the time
7 or date of the occurrence of the accidental incident from which
8 compensable injury, disability, or death results; and

9 ~~48.~~ 51. "Wages" means money compensation received for
10 employment at the time of the accident, including the reasonable
11 value of board, rent, housing, lodging, or similar advantage
12 received from the employer and includes the amount of tips required
13 to be reported by the employer under Section 6053 of the Internal
14 Revenue Code and the regulations promulgated pursuant thereto or the
15 amount of actual tips reported, whichever amount is greater.

16 SECTION 2. AMENDATORY Section 13, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2020, Section 13), is amended to read as
18 follows:

19 Section 13. A. 1. A mental injury or illness is not a
20 compensable injury unless caused by a physical injury to the
21 employee, and shall not be considered an injury arising out of and
22 in the course and scope of employment or compensable unless
23 demonstrated by a preponderance of the evidence; provided, however,
24 that this physical injury limitation shall not apply to any victim

1 of a crime of violence or a First Responder who has been found to
2 suffer from Post Traumatic Stress Disorder as a result of responding
3 to an emergency.

4 2. No mental injury or illness under this section shall be
5 compensable unless it is also diagnosed by a licensed psychiatrist
6 or psychologist and unless the diagnosis of the condition meets the
7 criteria established in the ~~most current issue of the~~ Diagnostic and
8 Statistical Manual of Mental Disorders, fourth edition (DSM-IV).

9 B. 1. Notwithstanding any other provision of this act, where
10 a claim is for mental injury or illness, the employee shall be
11 limited to twenty-six (26) weeks of disability benefits unless it is
12 shown by clear and convincing evidence that benefits should continue
13 for a set period of time, not to exceed a total of fifty-two (52)
14 weeks.

15 2. a. In cases where death results directly from the mental
16 injury or illness within a period of one (1) year,
17 compensation shall be paid the dependents as provided
18 in other death cases under this act.

19 b. Death directly or indirectly related to the mental
20 injury or illness occurring one (1) year or more from
21 the incident resulting in the mental injury or illness
22 shall not be a compensable injury.
23
24

1 C. If the Commission finds a First Responder has suffered Post
2 Traumatic Stress Disorder not accompanied by a physical injury,
3 benefits shall be limited as follows:

4 1. Reasonable and necessary medical treatment for Post
5 Traumatic Stress Disorder subject to the Oklahoma Workers'
6 Compensation Fee Schedule, for a period of no longer than one (1)
7 year. The employer shall not be responsible for medical treatment
8 in the form of prescription medicine in excess of Ten Thousand
9 Dollars (\$10,000.00);

10 2. If the Commission finds a First Responder temporarily unable
11 to perform the job duties or any alternative work offered by the
12 employer, he or she shall be entitled to receive compensation which
13 is the greater of the weekly disability benefit provided for in a
14 collective bargaining agreement according to the policy of the
15 employer or seventy percent (70%) of the injured employee's average
16 weekly wage not to exceed the state average weekly wage. In no
17 event shall the disability benefits combine to extend beyond fifty-
18 two (52) weeks; or

19 3. During any period in which a First Responder is temporarily
20 unable to perform the job duties as a result of Post Traumatic
21 Stress Disorder, the employer shall be responsible to maintain
22 health insurance coverage for the First Responder, if such health
23 insurance was in effect on the date of the injury, for a period of
24 up to one (1) year.

1 D. Provided, the benefits provided in paragraph 1 of subsection
2 C of this section shall not be required if the employee is an
3 employee of a city, county or the State of Oklahoma that provides a
4 Mental Health Treatment Program as required, authorized and approved
5 by the Oklahoma Department of Mental Health and Substance Abuse
6 Services.

7 E. The Oklahoma Department of Mental Health and Substance Abuse
8 Services shall develop a comprehensive Mental Health Treatment
9 Program for the treatment of Post Traumatic Stress Disorder by July
10 1, 2021.

11 SECTION 3. This act shall become effective July 1, 2021.

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

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