

1 ENGROSSED SENATE
BILL NO. 1076

By: Murdock of the Senate

2
3 and

4 Newton of the House

5
6 An Act relating to the Administrative Workers'
7 Compensation Act; amending 85A O.S. 2021, Section 2,
8 which relates to definitions; modifying definitions;
9 updating statutory language; updating statutory
10 references; and providing an effective date.

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

12 SECTION 1. AMENDATORY 85A O.S. 2021, Section 2, is
13 amended to read as follows:

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

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

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

22 Whenever required by the context, the term "~~carrier~~" carrier shall
23 be deemed to include duly qualified self-insureds or self-insured
24 groups;

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

11 4. "Case manager" means a person who is a registered nurse with
12 a current, active unencumbered license from the Oklahoma Board of
13 Nursing, or possesses one or more of the following certifications
14 which indicate the individual has a minimum number of years of case
15 management experience, has passed a national competency test and
16 regularly obtains continuing education hours to maintain
17 certification:

- 18 a. Certified Disability Management Specialist (CDMS),
- 19 b. Certified Case Manager (CCM),
- 20 c. Certified Rehabilitation Registered Nurse (CRRN),
- 21 d. Case Manager - Certified (CMC),
- 22 e. Certified Occupational Health Nurse (COHN), or
- 23 f. Certified Occupational Health Nurse Specialist (COHN-
- 24 S);

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

11 6. "Child" means a natural or adopted son or daughter of the
12 employee under eighteen (18) years of age; or a natural or adopted
13 son or daughter of an employee eighteen (18) years of age or over
14 who is physically or mentally incapable of self-support; or any
15 natural or adopted son or daughter of an employee eighteen (18)
16 years of age or over who is actually dependent; or any natural or
17 adopted son or daughter of an employee between eighteen (18) and
18 twenty-three (23) years of age who is enrolled as a full-time
19 student in any accredited educational institution. The term ~~"child"~~
20 child includes a posthumous child, a child legally adopted or one
21 for whom adoption proceedings are pending at the time of death, an
22 actually dependent stepchild or an actually dependent acknowledged
23 child born out of wedlock;

24

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

4 8. "Commission" means the Oklahoma Workers' Compensation
5 Commission;

6 9. a. "Compensable injury" means damage or harm to the
7 physical structure of the body, or damage or harm to
8 prosthetic appliances, including eyeglasses, contact
9 lenses, or hearing aids, of which the major cause is
10 either an accident, cumulative trauma or occupational
11 disease arising out of the course and scope of
12 employment. An "accident" means an event involving
13 factors external to the employee that:

- 14 (1) was unintended, unanticipated, unforeseen,
15 unplanned and unexpected,
- 16 (2) occurred at a specifically identifiable time and
17 place,
- 18 (3) occurred by chance or from unknown causes, or
- 19 (4) was independent of sickness, mental incapacity,
20 bodily infirmity or any other cause.

21 b. ~~"Compensable injury"~~ Compensable injury does not
22 include:

- 23 (1) injury to any active participant in assaults or
24 combats which, although they may occur in the

1 workplace, are the result of non-employment-
2 related hostility or animus of one, both, or all
3 of the combatants and which assault or combat
4 amounts to a deviation from customary duties;
5 provided, however, injuries caused by horseplay
6 shall not be considered to be compensable
7 injuries, except for innocent victims,

8 (2) injury incurred while engaging in or performing
9 or as the result of engaging in or performing any
10 recreational or social activities for the
11 employee's personal pleasure,

12 (3) injury which was inflicted on the employee at a
13 time when employment services were not being
14 performed or before the employee was hired or
15 after the employment relationship was terminated,

16 (4) injury if the accident was caused by the use of
17 alcohol, illegal drugs, or prescription drugs
18 used in contravention of physician's orders. If
19 a biological specimen is collected within twenty-
20 four (24) hours of the employee being injured or
21 reporting an injury, or if at any time after the
22 injury a biological specimen is collected by the
23 ~~Oklahoma~~ Office of the Chief Medical Examiner if
24 the injured employee does not survive for at

1 least twenty-four (24) hours after the injury and
2 the employee tests positive for intoxication, an
3 illegal controlled substance, or a legal
4 controlled substance used in contravention to a
5 treating physician's orders, or refuses to
6 undergo the drug and alcohol testing, there shall
7 be a rebuttable presumption that the injury was
8 caused by the use of alcohol, illegal drugs, or
9 prescription drugs used in contravention of
10 physician's orders. This presumption may only be
11 overcome if the employee proves by clear and
12 convincing evidence that his or her state of
13 intoxication had no causal relationship to the
14 injury,

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

1 (6) any preexisting condition except when the
2 treating physician clearly confirms an
3 identifiable and significant aggravation incurred
4 in the course and scope of employment.

5 c. A compensable injury shall be established by medical
6 evidence supported by objective findings as defined in
7 paragraph 31 of this section.

8 d. The injured employee shall prove by a preponderance of
9 the evidence that he or she has suffered a compensable
10 injury.

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

18 f. An employee who suffers a compensable injury shall be
19 entitled to receive compensation as prescribed in ~~this~~
20 ~~act~~ the Administrative Workers' Compensation Act.

21 Notwithstanding other provisions of law, if it is
22 determined that a compensable injury did not occur,
23 the employee shall not be entitled to compensation
24

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

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

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

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

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

1 designated by an employer and travel by an employee in furtherance
2 of the affairs of an employer that is specifically directed by the
3 employer. This term does not include:

- 4 a. an employee's transportation to and from his or her
5 place of employment,
- 6 b. travel by an employee in furtherance of the affairs of
7 an employer if the travel is also in furtherance of
8 personal or private affairs of the employee,
- 9 c. any injury occurring in a parking lot or other common
10 area adjacent to an employer's place of business
11 before the employee clocks in or otherwise begins work
12 for the employer or after the employee clocks out or
13 otherwise stops work for the employer unless the
14 employer owns or maintains exclusive control over the
15 area, or
- 16 d. any injury occurring while an employee is on a work
17 break, unless the injury occurs while the employee is
18 on a work break inside the employer's facility or in
19 an area owned by or exclusively controlled by the
20 employer and the work break is authorized by the
21 employee's supervisor;

22 14. "Cumulative trauma" means an injury to an employee that is
23 caused by the combined effect of repetitive physical activities
24 extending over a period of time in the course and scope of

1 employment. Cumulative trauma shall not mean fatigue, soreness or
2 general aches and pain that may have been caused, aggravated,
3 exacerbated or accelerated by the employee's course and scope of
4 employment. Cumulative trauma shall have resulted directly and
5 independently of all other causes;

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

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

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

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

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

12 b. The term ~~"employee"~~ employee shall not include:

- 13 (1) any person for whom an employer is liable under
14 any Act of Congress for providing compensation to
15 employees for injuries, disease or death arising
16 out of and in the course of employment including,
17 but not limited to, the Federal Employees'
18 Compensation Act, the Federal Employers'
19 Liability Act, the Longshore and Harbor Workers'
20 Compensation Act and the Jones Act, to the extent
21 his or her employees are subject to such acts,
22 (2) any person who is employed in agriculture,
23 ranching, or horticulture by an employer who had
24 a gross annual payroll in the preceding calendar

1 year of less than ~~One Hundred Thousand Dollars~~
2 ~~(\$100,000.00)~~ One Hundred Fifty Thousand Dollars
3 (\$150,000.00) wages for agricultural, ranching or
4 horticultural workers, or any person who is
5 employed in agriculture, ranching or horticulture
6 who is not engaged in operation of motorized
7 machines. This exemption applies to any period
8 of time for which such employment exists,
9 irrespective of whether or not the person is
10 employed in other activities for which the
11 exemption does not apply. If the person is
12 employed for part of a year in exempt activities
13 and for part of a year in nonexempt activities,
14 the employer shall be responsible for providing
15 workers' compensation only for the period of time
16 for which the person is employed in nonexempt
17 activities,

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

20 (4) 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 (5) 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 (6) 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 (7) 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 (8) 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 (9) 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 (10) 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, and

15 (11) any person who is a dependent child of an owner
16 of a farm, ranch, livestock market, or other
17 agricultural business and the dependent child is
18 employed by such;

19 19. "Employer" means a natural person, partnership,
20 association, limited liability company, corporation, and the legal
21 representatives of a deceased employer, or the receiver or trustee
22 of a person, partnership, association, corporation, or limited
23 liability company, departments, instrumentalities and institutions
24 of this state and divisions thereof, counties and divisions thereof,

1 public trusts, boards of education and incorporated cities or towns
2 and divisions thereof, employing a person included within the term
3 ~~"employee"~~ employee as defined in this section. Employer may also
4 mean the employer's workers' compensation insurance carrier, if
5 applicable. Except as provided otherwise, ~~this act~~ the
6 Administrative Workers' Compensation Act applies to all public and
7 private entities and institutions;

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

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

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

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

1 rehabilitator, trustee or similar officer has been appointed by a
2 court of competent jurisdiction to act in lieu of or on behalf of
3 the self-insurer;

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

6 25. "Insurance Commissioner" means the Insurance Commissioner
7 of ~~the State of Oklahoma~~ this state;

8 26. "Insurance Department" means the Insurance Department of
9 ~~the State of Oklahoma~~ this state;

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

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

21 29. "Medical services" means those services specified in
22 Section 50 of this title;

23 30. "Misconduct" shall include the following:

24 a. unexplained absenteeism or tardiness,

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

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

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the Sixth

1 Edition of the American Medical Association
2 "Guides to the Evaluation of Permanent
3 Impairment".

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

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

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

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

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

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

13 35. "Permanent total disability" means, based on objective
14 findings, incapacity, based upon accidental injury or occupational
15 disease, to earn wages in any employment for which the employee may
16 become physically suited and reasonably fitted by education,
17 training, experience or vocational rehabilitation provided under
18 ~~this act~~ 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. "Preexisting condition" means any illness, injury, disease,
22 or other physical or mental condition, whether or not work-related,
23 for which medical advice, diagnosis, care or treatment was
24 recommended or received preceding the date of injury;

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

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

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

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

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

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

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

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

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

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

24

