

Oklahoma Department of Labor

Workers' Compensation Law

§2.1-2.7, 2b, 2e, 3, 11, 46, 61, 63.1-3

2002 Edition



Lloyd L. Fields
Commissioner of Labor



Workers’ Compensation in Oklahoma...

“I am pleased to provide this updated guide as a resource for Oklahoma workers’ compensation law. It includes information from Title 85 of the Oklahoma Statutes as well as other state agency contact information for answers

to workers’ compensation questions. Also included in this publication are frequently asked questions concerning workers’ compensation law in Oklahoma.

“At the Oklahoma Department of Labor, we strive to educate and inform Oklahomans about laws within our jurisdiction.”

A handwritten signature in black ink that reads "Lloyd L. Fields". The signature is written in a cursive, flowing style.

Lloyd L. Fields
Commissioner of Labor



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*Frequently Asked
Questions about
Workers' Compensation
in Oklahoma*

1. What is the Workers' Compensation Act?

The Workers' Compensation Act is a law that specifies the rights and responsibilities of employers and employees when a workplace injury occurs. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide, compensation for the disability or death of an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment as provided by the Workers' Compensation Act.

2. What is workers' compensation?

Workers' compensation (WC) provides benefits to an insured employer's employees who have suffered certain job-related injuries or occupational diseases. An employee's descendants may also be entitled to benefits if the employee dies as a result of a job-related injury.

3. Does the Workers' Compensation Act apply to all employers?

The Workers' Compensation Act does not apply to all employers. For a complete list of exemptions, refer to Title 85 Oklahoma Statutes §2.1-2.7,11.

4. Where can employers purchase workers' compensation?

Employers can purchase insurance through a licensed insurance agent, CompSource Oklahoma (formerly the Oklahoma State Insurance Fund), or a self-insured group association. To obtain information on approved WC providers, employers may contact the Insurance Department at the Workers' Compensation Court.

5. Are employers required to purchase workers' compensation?

The WC Act requires employers to obtain WC insurance from an approved provider. Employers are also required to post Form 1A (Oklahoma Workers' Compensation Notice and Instructions to Employers and Employees) advising employees they are entitled to benefits under the Workers' Compensation Act. Form 1A is furnished by the Workers' Compensation Court or insurance provider.

6. Can employees pay workers' compensation premiums or waive rights to coverage?

No agreement by any employee to pay any portion of an employer's WC premiums shall be valid. Also, no agreement by an employee to waive his/her right to WC insurance coverage shall be valid. Employers cannot deduct WC insurance premiums from an employee's wages.

7. What if fraud is suspected?

If suspicion of fraudulent activity with regard to the Workers' Compensation Act exists, contact the Workers' Compensation Fraud Unit at the Oklahoma Attorney General's office.

8. What should employees do if they are injured?

If an employee is injured in the course of employment, the employee should notify the employer immediately. Unless oral or written notice is given to the employer or medical treatment is given within thirty (30) days of the injury, any claim for compensation may be denied. More information may be obtained by contacting the Oklahoma Workers' Compensation Court.

9. What is required of employers if an employee is injured?

Employers must provide an injured employee with medical care and other necessary services. The employer must furnish the employee with forms to file a WC claim. If an employee requires medical attention away from the work site or the injury results in loss of time beyond the employee's work shift, the employer must file a Form 2 (Employer's First Notice of Injury) with the Workers' Compensation Court and the

employer's insurance provider within ten (10) days of the notice of injury. More information may be obtained by contacting the Oklahoma Workers' Compensation Court.

10. How does workers' compensation coverage help employees?

Workers' compensation insurance pays an injured employee's medical costs and will pay part of the employee's wages if the employee cannot return to work. For additional information and assistance, contact a counselor at the Workers' Compensation Court.

11. How does worker's compensation protect employers?

The employer's WC insurance carrier must pay all necessary costs of a job-related injury as outlined in the schedule of benefits in the Workers' Compensation Act. If an employer is sued by an injured employee for negligence, the insurance company will provide financial protection from liability and pay any compensation due the employee.

12. Who should be contacted if an employer does not provide workers' compensation?

If an employee is injured and the employer is not insured, or if an employer is suspected of not providing WC insurance, contact the WC Enforcement Division at the Oklahoma Department of Labor (ODOL).

13. What are the responsibilities of the ODOL Workers' Compensation Enforcement Division?

The division is responsible for ensuring that employers comply with the Workers' Compensation Act. The WC Enforcement Division locates and cites employers for failing to maintain WC insurance.

14. What happens when an employer is cited?

If an employer is unable to provide proof of WC insurance, ODOL labor compliance officers are required to issue a citation that may result in the assessment of civil penalties based upon the total number of employees. By law, assessed civil penalties are substantially reduced if the cited employer obtains WC insurance within thirty (30) days of the date of citation. If the cited employer fails to either obtain WC insurance or otherwise comply with the Workers' Compensation Act, civil penalties

of up to ten thousand dollars (\$10,000) may be assessed. The Commissioner of Labor may also issue a Cease and Desist Order requiring the cited employer to stop all business operations until compliance has been established by ODOL.

15. What rights do cited employers have?

Each employer cited by the ODOL WC Enforcement Division has the right to an opportunity for a hearing to contest the citation. Should an employer contest the citation or any portion of the citation, the matter will be heard by a hearing officer designated by the Commissioner of Labor to determine a fair and equitable resolution of the violation.

An employer may appeal the decision of the hearing officer to the Commissioner of Labor (or her designee) by filing, within thirty (30) days, a written request for a formal hearing on the matter. At both stages of the hearing process, the employer has the right to counsel, to present evidence, and to examine or call witnesses as provided by the Administrative Procedures Act and OAC: 380:1-7-1 through 1-7-25.

A final order from a formal hearing may be appealed to the district court in the county in which the business is located.

16. What is the contact information for the Workers' Compensation Court and the Attorney General?

The contact information for workers' compensation related agencies is found at the end of this publication.

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Title 85 – Workers’ Compensation Law

§2.1 Employees excluded

Commencing January 1, 1979, compensation provided for the Workers’ Compensation Act¹ shall be payable to an employee for injuries arising out of and in the course of his employment. The Workers’ Compensation Act shall not apply to the following employees:

1. Any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Ten Thousand Dollars (\$10,000.00) for such workers.
2. Any person for whom an employer is liable under any Act of Congress for providing compensation to employees for injuries, disease or death arising out of and in the course of employment including, but not limited to, the Federal Employees’ Compensation Act,² the Federal Employers’ Liability Act,³ the Longshoreman’s and Harbor Workers’ Act⁴ and the Jones Act,⁵ to the extent his employees are subject to such Acts.
3. Any person who is employed in agriculture or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) cash wages for agricultural or horticultural workers.
4. Any person who is a licensed real estate sales associate or broker, paid on a commission basis

¹ Section 1 et seq. of this title.

² 5 U.S.C.A. § 8101 et seq.

³ 45 U.S.C.A. § 51 et seq.

⁴ 33 U.S.C.A. § 901 et seq.

⁵ 46 U.S.C.A. § 861 et seq.

§2.2 Agricultural employees not engaged in operation of motorized machines — Exemption

Notwithstanding any other provision of law, agricultural employees who are not engaged in operation of motorized machines shall be exempt from coverage of workers’ compensation.

§2.3 Persons providing services in medical care or social services programs — Exemption

The Workers’ Compensation Act¹ shall not apply to any person who is providing services in a medical care or social services program, or who is a participant in a work training program, administered by the Department of Institutions, Social and

Rehabilitative Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person.

¹ Section 1 et seq. of this title.

§2.4 Persons providing services in medical care or social services programs — Exemption

The Workers' Compensation Act¹ shall not apply to any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This section shall not be construed to include nursing homes.

¹ Section 1 et seq. of this title.

§2.5 Persons providing services in medical care or social services program — Exemption

(Duplicates §2.4)

§2.6 Certain employers of family members excluded

An employer with five or less total employees, all of whom are related by blood or marriage to the employer, will be exempt from the Workers' Compensation Act.¹

¹ Title 85, § 1 et seq.

§2.7 Youth sports league employers excluded

An employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to 26 U.S.C., Section 501(a) because it is an organization described in 26 U.S.C., Section 501(c)(3) or (4) shall be exempt from the Workers' Compensation Act.¹

¹ Title 85, § 1 et seq.

§2b Coverage for certain public employees

- A. 1. All public entities of this state, their agencies and instrumentalities, authorities, and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. Compensation or indemnification for compensation shall be paid out of the funds of the public entities.
2. Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts of which it or they are beneficiaries shall insure against liability for workers' compensation with the State Insurance Fund and shall not insure with any other insurance carrier unless:

- a. the State Insurance Fund refuses to accept the risk when the application for insurance is made;
- b. specifically authorized by law; or
- c. the state entity can obtain workers' compensation insurance coverage at the same cost or at a lower cost from another insurance carrier licensed in this state. Effective November 1, 1999, and for the next two fiscal years thereafter, not to exceed fifteen (15) state entities each fiscal year may obtain workers' compensation insurance coverage pursuant to this subparagraph from an insurer other than the State Insurance Fund. Beginning with the third fiscal year thereafter, all state entities may obtain workers' compensation insurance coverage pursuant to this subparagraph.

3. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary, may self-insure under rules promulgated by the State Insurance Fund. Self-insurance administration may only be obtained through the State Insurance Fund. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums set by the State Insurance Fund. The State Insurance Fund shall collect premiums, pay claims and provide for excess insurance. All dividends or profits accumulating from a self-insurance program shall be refunded to the participants on a formula devised by the State Insurance Fund.

B. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund or, through any combination of the following, may:

1. Self-insure and make any appropriation of funds to cover their risk.
2. Secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 of Title 51 of the Oklahoma Statutes;
3. Secure compensation for their employees in the manner provided in the Political Subdivision Tort Claims Act; subsection C of Section 167 of Title 51 of the Oklahoma Statutes, or
4. Insure with other insurance carriers licensed in the State of Oklahoma.

C. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with the State Insurance Fund or through any combination of the following, may:

1. Self-insure and make any appropriation of funds to cover their risk,
2. Secure reinsurance or excess insurance over and above a self-insured retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes; or
3. insure with other insurance carriers licensed in the State of Oklahoma.

D. Comprehensive universities shall insure against their liability for workers' compensation with the State Insurance Fund; or if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than one with the State Insurance Fund, or any combination of the following:

1. Self-insure and make any appropriation of funds to cover their risk, or
2. Insure with other insurance carriers licensed in the State of Oklahoma.

E. In addition to any other provision of this section, city, county, city-county, and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of the hospital prior to the inception date of a workers' compensation policy each year that the policy will result in a lower cost than one with the State Insurance Fund.

F. For purposes of the Workers' Compensation Act, all contracts of employment for state, county, municipal and state funded educational entities and public trusts will be considered to have been entered into in this state regardless of where the work is performed.

G. Where a person who is employed by the state, a municipality, a county, or by any political subdivisions thereof, and who, while off-duty from the employment, is employed by a private employer, the private employer alone shall be liable for compensation under the Workers' Compensation Act for any injury or death of the person arising out of and in the course of employment which occurs during the hours of actual employment by the private employer. The provisions of Section 11 of this title shall be applicable to private employers specified in this subsection. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. The provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.

§2e Temporary total disability benefits — State employees

The state and all its institutions of higher education, departments, instrumentalities, institutions and public trusts of which they are beneficiaries shall first provide temporary total disability benefits to employees injured on the job under their policy of workers' compensation insurance. At the option of the employee, temporary total disability benefits shall then be supplemented by any sick or annual leave available to the injured employee to the extent that the injured employee shall receive full wages during the employee's temporary absence from work; provided, the provisions of this section shall not preclude an employee from receiving any benefits to

which the employee is entitled under the State Employees Disability Program Act, Section 1331 et seq. of Title 74 of the Oklahoma Statutes.

§3 Definitions

As used in the Workers' Compensation Act: ¹

1. "Administrator" means the Administrator of workers' compensation as provided for in the Workers' Compensation Act;
2. "Claimant" means a person who claims benefits for an injury pursuant to the provisions of the Workers' Compensation Act;
3. "Court" means the Workers' Compensation Court;
4. "Cumulative trauma" means an injury resulting from employment activities which are repetitive in nature and engaged in over a period of time;
5. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as herein defined;
6. "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors.

Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's

policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors, members of a partnership, members of a limited liability company or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker.

Provided, "employee" shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor.

"Employee" shall not include a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor;

7. "Drive-away operations" include every person engaged in the business of

transporting and delivering new or used vehicles by driving, either singly or by towbar, saddle mount or full mount method, or any combination thereof, with or without towing a privately owned vehicle;

8. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer or any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker;

9. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act;

10. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Only injuries having as their source a risk not purely personal but one that is causally connected with the conditions of employment shall be deemed to arise out of the employment.

b. "Injury" or "personal injury" includes heart-related or vascular injury, illness or death only if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment.

c. "Injury" or "personal injury" shall not include mental injury that is unaccompanied by physical injury, except in the case of rape which arises out of and in the course of employment;

11. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer;

12. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of paragraph 4 of subsection A of Section 61 of this title;

13. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease. An occupational disease arises out of the employment only if there is a direct causal connection between the occupational disease and the conditions under which the work is performed;

14. "Permanent impairment" means any anatomical or functional abnormality or loss after maximum medical improvement has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury.

The Physician Advisory Committee may, pursuant to Section 201.1 of this title,

recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature.

Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of injury. All evaluations shall include an apportionment of injury causation. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, and before January 1, 1995, shall be operative one hundred twenty (120) days after the last day of the month of publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee.

Revisions adopted by the Administrator shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Governor and the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part.

The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereto except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or

modifications thereto, adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. These officially adopted guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides or alternative to said guides;

15. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee may become physically suited and reasonably fitted by education, training or experience, including vocational rehabilitation; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability;

16. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment;

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

18. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to Section 17 of this title;

19. a. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the Commissioner of Health pursuant to Section 14.3 of this title, that is authorized to enter into a contractual agreement with a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, to provide medical care under the Workers' Compensation Act. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitated or pre-paid plans.

b. If any insurer except, the State Insurance Fund, fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to its insurance carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.

c. If the State Insurance Fund fails to contract with at least three certified workplace medical plans, each covering at least fifty counties, then the in-

sured, after sixty (60) days' written notice to the State Insurance Fund, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to the State Insurance Fund, for additional one-year periods if the State Insurance Fund has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties; and

20. "Treating physician" or "attending physician" means the licensed physician who has provided or is providing medical care to the injured employee.

¹ Title 85, § 1 et seq.

§11 Employer to pay compensation — Exceptions — Liability for compensation

A. Every employer subject to the provisions of the Workers' Compensation Act¹ shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment, without regard to fault as a cause of such injury, and in the event of disability only, except as follows:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or another;
2. An injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use pursuant to any statute or by order of the Commissioner of Labor;
3. An injury resulting directly from the use or abuse of alcohol, illegal drugs or chemicals, or the abuse of prescription drugs; provided, this paragraph shall only apply when the use or abuse rendered the employee incapable of acting in the manner in which an ordinarily prudent and cautious person, in full possession of his or her faculties, and using reasonable care, would have acted at the time of the injury. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence; and
4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior.

B. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:

1. The independent contractor shall, at all times, be liable for compensation due to his direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of

the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided, however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by the independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section 415.1 of Title 40 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor.

Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

3. Where work is performed on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding

supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under the Workers' Compensation Act. Such owner or farmer shall not be liable to the employee of any independent contractor or subcontractor, where applicable, or the farmer's own employee.

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO₂) dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

¹ Title 85, § 1 et seq.

§46 Employee's agreement to pay premiums invalid — Penalty

No agreement by any employee to pay any portion of the premium paid by his employer to the cost of mutual insurance or other insurance, maintained for or carried for the purpose of providing compensation as herein required, shall be valid, and any employer who makes a deduction for such purpose from the wages or salary of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

§61 Ways of securing compensation to employees

A. An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers' Compensation Act.¹ When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator

of not more than One Thousand Dollars (\$1,000.00);

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

3. By obtaining and keeping in force a workers' compensation equivalent insurance product approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to Section 1 of this act;² or

4. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

a. less than one hundred employees or less than One Million Dollars (\$1,000,000.00) in net assets to:

(1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or

(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

b. one hundred or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:

(1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or

(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit required by this paragraph shall contain such terms as may be prescribed by the Administrator and shall be issued for the benefit of the Workers' Compensation Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

B. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator of the Workers' Compensation Court a notice, in such form as prescribed by the Administrator of the Court, acknowledging

that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Workers' Compensation Court with the application for membership.

C. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Section 12 of this title.

D. Any employer that knowingly provides false information to the Administrator for purposes of becoming self-insured or a group self-insurance association shall be subject to the perjury laws of this state.

E. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.³

¹ Title 85, § 1 et seq.

² Title 85, § 65.

³ Title 85, § 1 et seq.

§63.1 Penalty for failure to secure workers' compensation insurance — Cease and desist orders — Assessment and collection of penalty — Workers' Compensation Enforcement Revolving Fund — Limitation of service charges

A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by Section 61 of this title shall be liable for a civil penalty, to be assessed by the Commissioner of Labor or designee, of not more than Two Hundred Fifty Dollars (\$250.00) per employee for a first offense, unless the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation. If the employer secures workers' compensation insurance within thirty (30) days after receiving notice of the violation, the employer shall be liable for a civil penalty of not more than Seventy-five Dollars (\$75.00) per employee.

An employer shall be liable for a civil penalty of not more than One Thousand Dollars (\$1,000.00) per employee for a second or subsequent offense. Provided, the maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for all related series of violations. All civil penalties collected shall be deposited in the "Workers' Compensation Enforcement Revolving Fund" created by this section and shall be used to enforce the provisions of the Workers' Compensation Act. ¹

B. After an employer is cited for two offenses of failing to obtain workers' compensation insurance and fails to obtain coverage within thirty (30) days of the second citation, the Commissioner of Labor shall issue cease and desist orders, in accor-

dance with the Department of Labor administrative rules and procedures, against an employer until the violating employer shall obtain workers' compensation insurance for its employees. The Commissioner of Labor shall have the authority to require the cessation of activities of an employer whose employees are not covered by workers' compensation insurance until the violating employer shall obtain workers' compensation insurance for its employees; provided that an employer who has made application for workers' compensation coverage with either the State Insurance Fund or a private insurance carrier, and who, through no fault of the employer, has not received notice that such coverage has commenced, shall not be made to cease operations, as provided for in this section, until a determination has been made concerning his application for workers' compensation coverage. Any order to cease and desist issued by the Commissioner may be enforced in district court. The district court may issue the Commissioner an injunction without bond, for the purposes of enforcing this section.

C. The Commissioner of Labor or designee shall assess and collect any civil penalty incurred under subsection A of this section and, in the Commissioner's discretion, may remit, mitigate or negotiate said penalty. In determining the amount of the penalty to be assessed, or the amount agreed upon in any negotiation, consideration shall be given the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer charged has complied with the provisions of section 61 of this title or has otherwise attempted to remedy the consequences of the said violation. Individual proceedings shall be conducted pursuant to the provisions of Section 63.2 of this title.

D. There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Workers' Compensation Enforcement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies collected by the Department pursuant to the provisions of this section. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

E. No hospital or health provider shall charge more for a workers' compensation claim than for the same service not involving workers' compensation.

¹ Title 85, § 1 et seq.

§63.2 Civil fine — Hearing — Appeal

A. For the purpose of determining if a civil fine should be assessed, a summary hearing shall be conducted by a hearing officer designated by the Commissioner of Labor. The hearing officer shall determine from all of the evidence submitted by the Department of Labor and the employer a fair and equitable resolution of

the violation, taking into consideration the mitigating circumstances as required by Section 20 of this act.¹ The hearing officer shall assess, upon the examination of the evidentiary record, a penalty commensurate with the violation so adjudged. Provided the employer may provide additional mitigating circumstances or evidence to the hearing officer within ten (10) days of the assessment and a reevaluation of the penalty shall be conducted. Unless a formal hearing is requested pursuant to the provisions of subsection B of this section, the penalty shall become final within thirty (30) days of assessment. Upon becoming final, the penalty shall be regarded as any other money judgement and may be pursued for collection as prescribed by law for any other such remedy.

B. An employer may appeal the decision of the hearing officer to the Commissioner of Labor by filing, within thirty (30) days of the date of assessment, a written request for a formal hearing. The hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, Section 301 et seq. of Title 75 of the Oklahoma Statutes. A final order from said hearing may be appealed to the district court in the county in which the business of the employer is located pursuant to the provisions of the Administrative Procedures Act. Subject to approval of the Attorney General, the Commissioner may engage in any proceeding of appeal in district court.

Section 63.1 of this title.

§63.3 Criminal penalties for violating §61 of this title

A. Any employer who willfully fails to provide compensation required by Section 61 of Title 85 of the Oklahoma Statutes shall be charged with a misdemeanor and subject to a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.

B. Evidence of two prior penalties assessed by the Department of Labor pursuant to Sections 20 and 21 of this act¹ in any given three-year period shall constitute a prima facie case of a willful violation.

¹ Sections 63.1 and 63.2 of this title.

For more information . . .

Oklahoma Department of Labor

www.labor.ok.gov

Oklahoma City

4001 North Lincoln Boulevard
Oklahoma City, OK 73105
Telephone 405-528-1500
or 888-269-5353
Fax 405-528-5751

Tulsa

440 South Houston, Suite 300
Tulsa, OK 74127
Telephone 918-581-2400
Fax 918-581- 2431

Workers' Compensation Court

1915 North Stiles
Oklahoma City, OK 73105
Counselor Telephone 405-522-8760
or 800-522-8210

Attorney General

Workers' Compensation Fraud Unit

4545 North Lincoln Boulevard, Suite 260
Oklahoma City, OK 73105
Telephone 405-522-3403

CompSource Oklahoma
formerly Oklahoma Insurance Fund

410 North Walnut
Oklahoma City, OK 73104
www.compsourceok.com

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