

Oklahoma Department of Labor

Workers' Compensation Law

Title 85, Sections 308, 311, 313,
314, 349, and 351-354
2011 Edition



Mark Costello
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.

Mark Costello

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Commissioner of Labor



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Frequently Asked Questions about Workers' Compensation in Oklahoma

1. What is the Workers' Compensation Code?

The Workers' Compensation Code 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 Code 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 Code.

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 Code apply to all employers?

The Workers' Compensation Code does not apply to all employers. For a complete list of exemptions, refer to Title 85 Oklahoma Statutes §311.

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 Code 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 Code. 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 Code 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 Code. 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. Whoshouldbecontactedifanemployerdoesnotprovide 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 Code. 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 Code, 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 his 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 Code

§308 Definitions

As used in the Workers’ Compensation Code:

1. “Actually dependent” means a surviving spouse, a child, or any other person who receives one-half (1/2) or more of his or her support from the employee;
2. “Administrator” means the Administrator of the Workers’ Compensation Court;
3. “Amount in dispute” means the dollar value of any permanent disability award granted to the employee by the Court for a disability claim which is greater than the dollar amount offered by the employer that admits compensability within twenty (20) days of the filing of the Employee’s First Notice of Accidental Injury and Claim for Compensation to the employee for such disability claim, when the employer has made a written settlement offer within thirty (30) days of the employee reaching maximum medical improvement;
4. “Brother” or “sister” means a sibling of the employee under eighteen (18) years of age, eighteen (18) years of age or over and physically or mentally incapable of self-support, eighteen (18) years of age or over and actually dependent and brothers and sisters by adoption;
5. “Case management” means the ongoing coordination, by a case manager, of health care services provided to an injured or disabled worker, including, but not limited to systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker; ensuring that any treatment plan follows all appropriate treatment protocols, utilization controls and practice parameters; assessing whether alternative health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards; and ensuring that the injured or disabled worker is following the prescribed health care plan;
6. “Case manager” means a person who is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or possesses one or more of the following certifications which indicate the individual has a minimum number of years of case management experience, has passed a national competency test and regularly obtains continuing education hours to maintain certification:
 - a. Certified Disability Management Specialist (CDMS),
 - b. Certified Case Manager (CCM),
 - c. Certified Rehabilitation Registered Nurse (CRRN),

- d. Case Manager-Certified (CMC),
- e. Certified Occupational Health Nurse (COHN), or
- f. Certified Occupational Health Nurse Specialist (COHN-S);

7. “Certified workplace medical plan” means an organization of health care providers or any other entity, certified by the State Commissioner of Health, 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 CompSource Oklahoma, to provide medical care under the Workers’ Compensation Code. 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 prepaid plans;

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

9. “Claimant” means a person who claims benefits for an injury pursuant to the provisions of the Workers’ Compensation Code;

10. a. “Compensable injury” means any injury or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment if such employment was the major cause of the specific injury or illness. An injury, other than cumulative trauma, is compensable only if it is caused by a specific incident and is identifiable by time, place and occurrence unless it is otherwise defined as compensable in this act. A compensable injury must be established by objective medical evidence. The employee has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment.

b. “Compensable injury” means a cardiovascular, coronary, pulmonary, respira-

tory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death, only if, in relation to other factors contributing to the physical harm, a work-related activity is the major cause of the physical harm. Such injury shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the usual work of the employee, or alternately, that some unusual incident occurred which is found to have been the major cause of the physical harm.

c. "Compensable injury" shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is a major cause of the deterioration or degeneration and is supported by objective medical evidence; nor shall it include injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities.

d. "Compensable injury" includes personal property which is established by objective medical evidence to be medically necessary and which replaces or improves normal physical function of the body, such as artificial dentures, artificial limbs, glass eyes, eye glasses and other prostheses which are placed in or on the body and is damaged as a result of the injury.

e. "Compensable injury" shall not include an injury resulting directly or indirectly from idiopathic causes; any contagious or infectious disease unless it arises out of and occurs in the scope and course of employment; or death due to natural causes occurring while the worker is at work.

f. "Compensable injury" shall not include mental injury that does not arise directly as a result of a compensable physical injury, except in the case of rape or other crime of violence which arises out of and in the course of employment;

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

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

13. "Continuing medical maintenance" means medical treatment that is reasonable and necessary to maintain claimant's condition resulting from the compensable injury or illness after reaching maximum medical improvement.

Continuing medical maintenance shall not include diagnostic tests, surgery, injections, counseling, physical therapy, or pain management devices or equipment, unless specifically authorized by the Workers' Compensation Court in advance of such treatment;

14. "Court" means the Workers' Compensation Court;

15. "Cumulative trauma" means a compensable injury which is repetitive in nature and engaged in over a period of time, the major cause of which results from employment activities, and proved by objective medical evidence;

16. "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;

17. "Employee" means any person engaged in the employment of an employer covered by the terms of the Workers' Compensation Code except for such persons as may be excluded elsewhere in this act. Provided, any person excluded as an employee may, if otherwise qualified, be eligible for benefits under the Workers' Compensation Code if specifically covered by any policy of insurance covering benefits under the Workers' Compensation Code. "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 firefighter, peace officer or emergency management worker. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor.

18. "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 defined in this section. Employer may also mean the employer's workers' compensation insurance carrier, if applicable;

19. "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 emergency management worker;

20. "Evidence-based" means expert-based, literature-supported and outcomes validated by well-designed randomized trials when such information is available and which uses the best available evidence to support medical decision making;
21. "Gainful employment" means the capacity to perform employment for wages for a period of time that is not part-time, occasional or sporadic;
22. "Grandchild" means a child of a child;
23. "Impaired self-insurer" means a private self-insurer or group self-insurance association that fails to pay its workers' compensation obligations, or is financially unable to do so and is the subject of any proceeding under the Federal Bankruptcy Reform Act of 1978, and any subsequent amendments or is the subject of any proceeding in which a receiver, custodian, liquidator, rehabilitator, trustee or similar officer has been appointed by a court of competent jurisdiction to act in lieu of or on behalf of the self-insurer;
24. "Incapacity" means inadequate strength or ability to perform a work-related task;
25. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to this act;
26. "Insurance carrier" shall include CompSource Oklahoma, 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 Section 51 of this act;
27. "Light duty" describes the status of an employee when a physician has declared the employee available for work with specific temporary physical restrictions;
28. "Major cause" means more than fifty percent (50%) of the resulting injury, disease or illness. A finding of major cause shall be established by a preponderance of the evidence. A finding that the workplace was not a major cause of the injury, disease or illness shall not adversely affect the exclusive remedy provisions of this act and shall not create a separate cause of action outside of this act;
29. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;
30. "Medical treatment" means such medical, diagnostic, surgical or other

attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be reasonable and necessary after the compensable injury for an injured employee;

31. "Nationally recognized" includes, but is not limited to, syntheses of clinical issues that may take the form of published reports in the scientific literature, national consensus documents, formalized documents addressing standards of practice, practice parameters from professional societies or commissioners, and technology assessments produced by independent evidence-based practice centers;

32. "Objective medical evidence" means evidence which meets the criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court case law applicable thereto. Objective findings are those findings which cannot come under the voluntary control of the patient. When determining physical or anatomical impairment, neither a physician, any other medical provider, a judge of the Workers' Compensation Court, nor the courts may consider complaints of pain. For the purpose of making physical or anatomical impairment ratings to the spine, physicians shall use criteria established by the American Medical Association guides or modifications thereto as approved by the Legislature. Objective evidence necessary to prove physical or anatomical impairment in occupational hearing loss cases shall be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to, audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty;

33. "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 the employment was the major cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section;

34. "Peer review" means the process of subjecting submitted manuscripts, guidelines, or other clinical or scholarly work to the scrutiny of others who are experts in the same field;

35. "Permanent partial impairment" means any anatomical abnormality or loss of use after maximum medical improvement has been achieved which can be evaluated by a physician. Any examining physician shall only evaluate impairment in accordance with the method prescribed in Section 33 of this act. All evaluations of permanent impairment must be supported by objective medical

evidence;

36. “Permanent total disability” means incapacity, because of accidental injury or occupational disease, to earn 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;

37. “Private self-insurer” means a private employer that has been authorized to self-insure its workers’ compensation obligations pursuant to Section 51 of this act, but does not include group self-insurance associations authorized under Section 51 of this act or Section 398 of this title, or any public employer that self-insures pursuant to Section 13 of this act;

38. “Prosthetic device” means an artificial device used to replace a part or joint of the body that is lost or injured in an accident or illness covered by this act;

39. “Qualified independent medical examiner” means a licensed medical doctor or doctor of Osteopathy qualified to serve as an independent medical examiner pursuant to this act;

40. “Scheduled member” or “member” means hands, fingers, arms, legs, feet, toes, and eyes. In addition, for purposes of the Multiple Injury Trust Fund only, “scheduled member” means hearing impairment;

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

42. “State-developed” includes formalized treatment guidelines developed and adopted by state governments, or by the Workers’ Compensation Court upon recommendation of the Physician Advisory Committee;

43. “State’s average weekly wage” means the average weekly wage in this state determined by the Oklahoma Employment Security Commission annually, which shall be used to establish maximum benefits under the Workers’ Compensation Code for injuries occurring during a one-year period, which period shall begin on the first day of November after publication by the Oklahoma Employment Security Commission. For the purpose of computing benefits payable under the Workers’ Compensation Code, the state’s average weekly wage shall be

rounded to the nearest dollar;

44. “Subcontractor” means a person, firm, corporation or other legal entity hired by the general or prime contractor to perform a specific task for the completion of a work-related activity.

45. “Surgery” does not include an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis;

46. “Surviving spouse” means the employee’s spouse by reason of a legal marriage recognized by any state or nation or by common law, under the requirements of a common law marriage in this state, as determined by the Workers’ Compensation Court;

47. “Temporary partial disability” describes the status of an injured workers who is under active medical care that is expected to improve his or her condition and who is unable to perform some of the normal activities of his or her work or is limited to a portion of his or her normal hours of employment;

48. “Treating physician” means the licensed physician authorized to provide active medical treatment for an injured worker; and

49. “Wages” means money compensation received for employment at the time of the injury, including the reasonable value of board, rent, housing, lodging, bonuses, sales commissions, or similar advantage received from the employer.

§311 Employees excluded

The Workers’ Compensation Code shall not apply to the following employees:

1. 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, the Federal Employers’ Liability Act, the Longshoremens’ and Harbor Workers’ Act and the Jones Act, to the extent his or her employees are subject to such acts;
2. 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) wages for agricultural or horticultural workers, or any person who is employed in agriculture or horticulture who is not engaged in operation of motorized machines;
3. Any person who is a licensed real estate sales associate or broker, paid on a commission basis;
4. 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 paragraph shall not be construed to include nursing homes;

5. Any person employed by an employer with five or less total employees, all of whom are related by blood or marriage to the employer, if the employer is a natural person or a general or limited partnership, or an incorporator of a corporation if the corporation is the employer;

6. Any person employed by an employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to federal law;

7. Sole proprietors, members of a partnership, individuals who are party to a franchise agreement as set out by the Federal Trade Commission franchise disclosure rule, 16 CFR 436.1 through 436.11, 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, unless they elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Code;

8. Any 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;

9. 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 Code if the owner-operator elects to participate as a sole proprietor.

10. 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 Code if the drive-away owner-operator elects to participate as a sole proprietor; and

11. 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.

§312 Injuries Excluded

The following shall not constitute a compensable injury under the Workers' Compensation Code:

1. An injury occasioned by the willful intention of the injured employee to bring about injury to himself or herself, 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 which occurs when an employee's use of illegal drugs or chemicals or alcohol is the major cause of the injury or accident. The employee shall prove by a preponderance of the evidence that the use of drugs, chemicals or alcohol was not the major cause of the injury or accident. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence. A public or private employer may require an employee to undergo drug or alcohol testing if the employee has sustained an injury while at work. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation;
4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior;
5. An injury occurring at a time when employment services were not being performed before the employee was hired or after the employment relationship was terminated; and
6. An injury which occurs outside the course of employment. Employment shall be deemed to commence when an employee arrives at the employee's place of employment to report for work and shall terminate when the employee leaves the employee's place of employment, excluding areas not under the control of the employer or areas where essential job functions are not performed; provided, however, when the employee is instructed by the employer to perform a work-related task away from the employee's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the performance of job duties directly related to the task as instructed by the employer, including travel time that is solely related and necessary to the employee's performance of the task. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to or returning from an emergency, shall be deemed to be in the course of employment.

§313 Public Entities - State Insurance Fund

- 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 indem-

nification 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, may:

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 this act 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.

§314 Liability of Person, Firm, or Corporation Other Than Immediate Employer of Injured Employee

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 Code, when other than the immediate employer of the injured employee, shall be as follows:

1. In order for another employer on the same job as the injured or deceased worker to qualify as an intermediate or principal employer, the work performed by the immediate employer must be directly associated with the day to day activity carried on by such other employer's trade, industry, or business, or it must be the type of work that would customarily be done in such other employer's trade, industry, or business.
2. The independent contractor shall, at all times, be liable for compensation due to his or her 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 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 execution of an Affidavit of Exempt Status under the Workers' Compensation Code.
3. The person entitled to such compensation shall have the right to recover the same directly from the person's 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 Code 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 an Affidavit of Exempt Status under the Workers' Compensation Code properly executed by the independent contractor or subcontractor under Section 924.4 of Title 36 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 execution of an Affidavit of Exempt Status under the Workers' Compensation Code. 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 the 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.

4. Where work is performed by an independent contractor on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose case 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 Code for injuries to the independent contractor or his or her employees.

§349 Employee Agreement to Pay Premium Invalid - Misdemeanor - Assignment, Release, or Commutation - Payment in Case of Claimant Death

A. No agreement by any employee to pay any portion of the premium paid by the employer 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.

B. Claims for compensation or benefits due under the Workers' Compensation Code shall not be assigned, released or commuted except as provided by the Workers' Compensation Code, and, except for child support liens, shall be exempt from all claims of creditors and from levy, execution or attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. If an employee dies as a result of the accidental personal injury or occupational disease, any unaccrued portions of an award or order for compensation benefits shall abate.

C. An award made to a claimant for permanent partial impairment under the provisions of the Workers' Compensation Code shall, in case of the death of the claimant, due to causes other than the injury for which the person has been awarded permanent partial impairment, be payable to and for the benefit of the following persons:

1. If there is a surviving spouse and no child of the deceased under the age of eighteen (18) years, to the surviving spouse;
2. If there is a surviving child or children of the deceased under the age of eighteen (18) years, or dependent blind or dependent crippled child or children of any age, but no surviving spouse, then for the support of each such child, to share and share alike until the full payment of the award;
3. If there is a surviving spouse, a surviving child or children of the deceased under the age of eighteen (18) years, or a dependent blind or dependent crippled child or children of any age, one-half (1/2) shall be payable to the surviving

spouse and the other half to the surviving child or children;

4. If there is no surviving spouse or child under the age of eighteen (18), or dependent blind or dependent crippled child of any age, then to the dependent child under the age of twenty three (23), or a child of any age who is physically or mentally disabled and incapable of personal support.

§351 Employer to Secure Compensation - Proof of Ability to Pay - Penalty

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 of the Workers' Compensation Court providing for and securing the payment of the compensation provided for in the Workers' Compensation Code. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Code, 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. a. 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 Workers' Compensation Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

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

(a) 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

(b) 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 Code, or

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

(a) 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

(b) 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 Code.

b. 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 Code. 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 Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

c. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator a notice, in such form as prescribed by the Administrator, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Court with the application for membership.

d. All self-insurers under this act shall participate in the Workers' Compensation Self-Insurance Guaranty Fund created pursuant to Section 60 of this act, as a condition of authority to self-insure in this state, except public employers that self-insure pursuant to Section 13 of this act.

e. A self-insurer whose permit to self-insure is revoked, denied for renewal or surrendered is not relieved of the obligation for compensation to an employee for a compensable injury that occurred during the period of self-insurance. The security required under this section, including any interest thereon, shall be maintained by the Administrator as provided in this act until each claim for workers' compensation benefits is paid, settled, or lapses under this act, and costs of administration of such claims are paid.

B. 1. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Sections 2 and 52 through 54 of this act.

2. Failure on the part of any employer to secure the payment of compensation provided in the Workers' Compensation Code shall have the effect of enabling the Administrator to proceed on behalf of an injured employee of such employer

against the employer as provided in this section and Section 2 of this act.

3. Any employer that knowingly provides false information to the Administrator for purposes of securing or maintaining a self-insurance permit shall be subject to the perjury laws of this state.

§352 Failure to Secure Compensation - Civil Penalty - Cease and Desist Order - Injunction

A. In addition to any other penalty prescribed by law, any employer who fails to secure compensation required by Section 51 of this act 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 Department of Labor Revolving Fund and shall be used to enforce the provisions of the Workers' Compensation Code.

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 accordance 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 CompSource Oklahoma 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 to 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 51 of this act or has otherwise attempted to remedy the consequences of the said violation.

§353 Summary Hearing - Formal 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 52 of this act. 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. 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.

§354 Willful Failure to Provide Compensation - Misdemeanor - Penalty

Any employer who willfully fails to provide compensation required by Section 51 of this act 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. Evidence of two prior penalties assessed by the Department of Labor pursuant to Sections 52 and 53 of this act in any given three-year period shall constitute a prima facie case of a willful violation.

For more information . . .

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