

Oklahoma Workers' Compensation Court

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2010 WORKERS' COMPENSATION RELATED LEGISLATIVE CHANGES

The following is a general overview of workers' compensation related legislation passed by the 2nd Regular Session of the 52nd Oklahoma Legislature (2010). It is for informational purposes only. It is not a statement of policy by the Oklahoma Workers' Compensation Court, is not binding on the Court in any way and should not be relied upon as the basis of any action.

[HB 1611](#) - Effective 11/1/10

Requires claims adjusters for insurers duly authorized to transact workers' compensation insurance in Oklahoma to be licensed under the Insurance Adjusters Licensing Act, and to complete 6 hours of continuing education relating to the Workers' Compensation Act as part of the required 24 hours of continuing education.

[HB 2650](#) - Effective 8/27/10

- Amends the definition of: (1) **“employee”** to exclude individuals who are a party to a franchise agreement, (2) **“major cause”** to mean more than fifty percent (50%) of the resulting injury, disease or illness. A finding that the workplace was not a major cause of the injury shall not adversely affect exclusive remedy or create a separate cause of action outside of Title 85, Oklahoma Statutes; and (3) **“objective medical evidence”** to include objective findings which are those that cannot come under the voluntary control of the patient. Mentions tests and criteria pertaining to determinations of permanent impairment.
- Defines **“continuing medical maintenance,” “surgery”** (excludes an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis), **“evidence-based,” “nationally recognized,” “scientifically based,” “peer review,”** and **“state-developed.”**
- Restricts the compensability of injuries that occur to and from work.
- Excepts intentional torts from exclusive remedy. Identifies what constitutes an intentional tort. Precludes an injured employee from maintaining an action in both the Workers' Compensation Court and another court, when the employer has failed to secure its workers' compensation obligations as required by law or in the case of an intentional tort.
- Modifies entitlement to temporary total disability. Specifies that if the treating physician releases a claimant to light duty work with written restrictions, the employer makes a good faith offer in writing to provide a light duty position at the claimant's same rate of pay, and the claimant rejects the light duty assignment, the claimant is not entitled to temporary total disability.
- Prohibits Court ordered continuing medical maintenance, unless recommended by the treating physician when the claimant reaches maximum medical improvement, or unless

there is clear and convincing evidence to the contrary. Authorizes the Court to appoint an independent medical examiner at any time to determine the nature and extent of continuing medical maintenance.

- Limits the duration of permanent total disability benefits to 15 years or until the employee reaches the age of 100% Social Security retirement, whichever is longer. Provides that if the employee dies from causes unrelated to the work-related injury or illness, any person entitled to revive the action shall receive benefits only until the benefits would have terminated had the employee lived. Provides that if the Court awards both permanent partial and permanent total disability, the permanent total disability award shall not be due until after the permanent partial disability award is paid in full.
- Establishes a new compensation schedule for permanent partial disability for injuries occurring on or after August 27, 2010. The minimum weekly benefit payable for permanent partial disability is \$150. The maximum weekly benefit payable for permanent partial disability for injuries occurring on or after August 27, 2010 through August 26, 2015 is 70% of the employee's average weekly wage, not to exceed \$323. For injuries occurring on or after August 27, 2015, the maximum weekly benefit payable for permanent partial disability is 70% of the employee's average weekly wage, not to exceed 50% of the state's average weekly wage.
- Prohibits an award for permanent disfigurement for a part of the body for which permanent partial disability is awarded.
- Modifies compensation for soft tissue injuries. In case of a nonsurgical soft tissue injury in which the employer has promptly provided medical care, temporary total disability shall not exceed 8 weeks. A Court ordered extension of up to an additional 8 weeks is authorized if the treating physician recommends one or more injections. If the treating physician recommends surgery, the Court may order up to an additional 16 weeks of temporary total disability if the treating physician indicates the extension is appropriate or the parties agree. The Court shall terminate the extension benefits if surgery is not performed within 120 days of approval or authorization of the surgery by the respondent or Court, unless the delay is beyond the claimant's control. Provides that if surgery is performed, temporary total disability is subject to the limitations established in paragraph 2 of Section 22 of the Workers' Compensation Act. Expands exclusions from the definition of "soft tissue injury" to include all joint replacements.
- Makes the Physician Advisory Committee's findings and recommendations regarding reasonable and necessary medical treatment, duration of treatment, continuing medical maintenance, and development of a prescription formulary binding upon the Workers' Compensation Court, unless there is clear and convincing evidence to the contrary. Court ordered medical care that deviates from the Committee's findings and recommendations must be supported by specific findings. Eliminates the Committee's duty to consider certain standards when developing treatment guidelines.
- Creates the Task Force on Vocational Rehabilitation for Injured Workers until November 30, 2010 to study methods and procedures to improve vocational rehabilitation for injured workers. Requires a report of findings and recommendations to legislative leaders before termination of the Task Force.

HB 2652 - Effective 11/1/10

Modifies the number, term, appointment process and assignment of Judges of the Workers' Compensation Court. Provides that the first two judicial vacancies occurring on or after November 1, 2010 will operate to reduce the number of judges comprising the Court from ten to eight. Directs that three judges be permanently assigned to the Court's Tulsa location and five be permanently assigned to the Court's Oklahoma City location. Prohibits closure of the Court's Tulsa location without legislative approval. Reduces the existing six year judicial term from July to February of the year of expiration of the term. Current incumbent judges who are not reappointed are presumed to have served a full six year term without reduction in salary, benefits or time for judicial service. Subsequent judicial terms shall be for eight years. Judges serving an unexpired term on November 1, 2010 are eligible upon expiration of their respective terms for appointment to one, eight year term. Judges may seek an additional eight year term after a three year waiting period. Judicial appointments are made by the Governor with the advice and consent of the Senate. Subjects incumbent judges to the Judicial Nominating Commission process. Requires the Court's judges to be licensed to practice law in Oklahoma for not less than five years and have not less than five years of workers' compensation experience prior to appointment.

HB 2911 - Effective 5/10/10

Prohibits creation of a new business entity for the purpose of avoiding payment of a workers' compensation judgment.

HB 3169 - Effective 11/1/10

Expands the exemption from the Workers' Compensation Act for an employer with five or less total employees, all of whom are related by blood or marriage, to include the spouse of the exempt employer.

HJR 1056 - State Question No. 755, Legislative Referendum No. 355

Submits to a vote of the people at the next general election of the state a ballot measure to amend the Oklahoma Constitution to require courts of this state, including the Workers' Compensation Court, to rely on federal and state laws when deciding cases and to forbid courts from looking at international law or Sharia Law when deciding cases.

SB 1973 - Effective 11/1/10

- Requires all Workers' Compensation Court en banc proceedings to be recorded by a court reporter.
- Requires Court en banc orders that reverse a decision of the trial judge to contain specific findings explaining the reversal.
- Enumerates the grounds upon which an order or award of the Workers' Compensation Court may be modified, reversed for rehearing or set aside by the Supreme Court on appeal.
- Requires the Court Administrator to mail a certain notice to an injured worker upon the filing of an Employer's First Notice of Injury (Form 2), rather than upon the filing of a claim for compensation (Form 3) by the worker.

- Requires the claimant to be in attendance at the time of a mediation, unless all parties agree. Requires all parties to be represented during the entire mediation session by a person with full settlement authority. Permits the assigned trial judge to impose sanctions, costs and attorney fees, for good cause, against a party that does not have full settlement authority.
- Modifies fees payable to the Workers' Compensation Court's revolving fund, effective 11/1/10. Increases the Court en banc appeal fee from \$125 to \$175. Establishes a new \$100 fee per appeal to the Supreme Court for preparing, assembling, indexing and transmitting the record for appellate review. Increases the fee paid by the party against whom an award becomes final from \$75 to \$140. Increases the reopen fee from \$75 to \$130. Increases the application fee paid by group self-insureds, individual own risk employers and servicing companies for a permit from the Court Administrator to operate in Oklahoma from \$500 to \$1,000. Establishes a new self-insurance related fee that pertains to review by Workers' Compensation Court personnel of interim financial statements and/or loss runs submitted by a self-insured employer. The fee is \$500 per review, not to exceed \$1,000 per employer per fiscal year of the state. It is in addition to other fees.

SB 2054 - Effective 11/1/10

- Eliminates the Insurance Commissioner's duty to mail a form Affidavit of Exempt Status to requesters since posted on the Insurance Department's web site.
- Makes changes related to regulation of Professional Employer Organizations.

SJR 66

Directs the Secretary of State to remove Enrolled HJR 1041 of the 1st Session of the 52nd Oklahoma Legislature from the ballot at the next general election of the state in view of enactment of HB 2652 of the 2nd Session of the 52nd Oklahoma Legislature. HJR 1041 was a proposed legislative referendum for a vote by the people to require Senate approval of a person chosen by the Governor to fill a position on the Workers' Compensation Court. HB 2652 includes Senate confirmation of judicial appointments to the Workers' Compensation Court.