

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 767

By: Sykes

4
5
6 AS INTRODUCED

7 An Act relating to the Administrative Workers'
8 Compensation Act; amending Sections 2, 5 and 16,
9 Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2014,
10 Sections 2, 5 and 16), which relate to definitions,
11 liability, and Official Disability Guidelines;
12 modifying definitions; authorizing certain action
13 upon certain failure; modifying usage of certain
14 guidelines; and providing an effective date.

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

16 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2014, Section 2), is amended to read as
18 follows:

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

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

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

1 Whenever required by the context, the term "carrier" shall be deemed
2 to include duly qualified self-insureds or self-insured groups;

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

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

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

1 f. Certified Occupational Health Nurse Specialist (COHN-
2 S);

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

13 6. "Child" means a natural or adopted son or daughter of the
14 employee under eighteen (18) years of age; or a natural or adopted
15 son or daughter of an employee eighteen (18) years of age or over
16 who is physically or mentally incapable of self-support; or any
17 natural or adopted son or daughter of an employee eighteen (18)
18 years of age or over who is actually dependent; or any natural or
19 adopted son or daughter of an employee between eighteen (18) and
20 twenty-three (23) years of age who is enrolled as a full-time
21 student in any accredited educational institution. The term "child"
22 includes a posthumous child, a child legally adopted or one for whom
23 adoption proceedings are pending at the time of death, an actually
24

1 dependent stepchild or an actually dependent acknowledged child born
2 out of wedlock;

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

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

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

15 (1) was unintended, unanticipated, unforeseen,
16 unplanned and unexpected,

17 (2) occurred at a specifically identifiable time and
18 place,

19 (3) occurred by chance or from unknown causes, and

20 (4) was independent of sickness, mental incapacity,
21 bodily infirmity or any other cause.

22 b. "Compensable injury" does not include:

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

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

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

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

16 (4) injury where the accident was caused by the use
17 of alcohol, illegal drugs, or prescription drugs
18 used in contravention of physician's orders. If,
19 within twenty-four (24) hours of being injured or
20 reporting an injury, an employee tests positive
21 for intoxication, an illegal controlled
22 substance, or a legal controlled substance used
23 in contravention to a treating physician's
24 orders, or refuses to undergo the drug and

1 alcohol testing, there shall be a rebuttable
2 presumption that the injury was caused by the use
3 of alcohol, illegal drugs, or prescription drugs
4 used in contravention of physician's orders.

5 This presumption may only be overcome if the
6 employee proves by clear and convincing evidence
7 that his or her state of intoxication had no
8 causal relationship to the injury,

9 (5) any strain, degeneration, damage or harm to, or
10 disease or condition of, the eye or
11 musculoskeletal structure or other body part
12 resulting from the natural results of aging,
13 osteoarthritis, arthritis, or degenerative
14 process including, but not limited to,
15 degenerative joint disease, degenerative disc
16 disease, degenerative
17 spondylosis/spondylolisthesis and spinal
18 stenosis, or

19 (6) any preexisting condition except when the
20 treating physician clearly confirms an
21 identifiable and significant aggravation incurred
22 in the course and scope of employment.

23 c. The definition of "compensable injury" shall not be
24 construed to limit or abrogate the right to recover

1 for mental injuries as described in Section 13 of this
2 act, heart or lung injury or illness as described in
3 Section 14 of this act, or occupational diseases as
4 described in Section 65 of this act.

5 d. A compensable injury shall be established by medical
6 evidence supported by objective findings as defined in
7 paragraph 30 of this section.

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

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

18 g. An employee who suffers a compensable injury shall be
19 entitled to receive compensation as prescribed in this
20 act. Notwithstanding other provisions of law, if it
21 is determined that a compensable injury did not occur,
22 the employee shall not be entitled to compensation
23 under this act;

24

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

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

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

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

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

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

18 14. "Cumulative trauma" means an injury to an employee that is
19 caused by the combined effect of repetitive physical activities
20 extending over a period of time in the course and scope of
21 employment. Cumulative trauma shall not mean fatigue, soreness or
22 general aches and pain that may have been caused, aggravated,
23 exacerbated or accelerated by the employee's course and scope of
24 employment. Cumulative trauma shall have resulted directly and

1 independently of all other causes and the employee shall have
2 completed at least one hundred eighty (180) days of continuous
3 active employment with the employer;

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

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

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

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

1 of the Oklahoma National Guard while in the
2 performance of duties only while in response to state
3 orders and any authorized voluntary or uncompensated
4 worker, rendering services as a firefighter, peace
5 officer or emergency management worker. Travel by a
6 policeman, fireman, or a member of a first aid or
7 rescue squad, in responding to and returning from an
8 emergency, shall be deemed to be in the course of
9 employment.

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

- 11 (1) any person for whom an employer is liable under
12 any Act of Congress for providing compensation to
13 employees for injuries, disease or death arising
14 out of and in the course of employment including,
15 but not limited to, the Federal Employees'
16 Compensation Act, the Federal Employers'
17 Liability Act, the Longshore and Harbor Workers'
18 Compensation Act and the Jones Act, to the extent
19 his or her employees are subject to such acts,
- 20 (2) any person who is employed in agriculture or
21 horticulture by an employer who had a gross
22 annual payroll in the preceding calendar year of
23 less than One Hundred Thousand Dollars
24 (\$100,000.00) wages for agricultural or

- 1 horticultural workers, or any person who is
2 employed in agriculture or horticulture who is
3 not engaged in operation of motorized machines,
4 (3) any person who is a licensed real estate sales
5 associate or broker, paid on a commission basis,
6 (4) any person who is providing services in a medical
7 care or social services program, or who is a
8 participant in a work or training program,
9 administered by the Department of Human Services,
10 unless the Department is required by federal law
11 or regulations to provide workers' compensation
12 for such person. This division shall not be
13 construed to include nursing homes,
14 (5) any person employed by an employer with five or
15 fewer total employees, all of whom are related by
16 blood or marriage to the employer, if the
17 employer is a natural person or a general or
18 limited partnership, or an incorporator of a
19 corporation if the corporation is the employer,
20 (6) any person employed by an employer which is a
21 youth sports league which qualifies for exemption
22 from federal income taxation pursuant to federal
23 law,
24

- 1 (7) sole proprietors, members of a partnership,
2 individuals who are party to a franchise
3 agreement as set out by the Federal Trade
4 Commission franchise disclosure rule, 16 CFR
5 436.1 through 436.11, members of a limited
6 liability company who own at least ten percent
7 (10%) of the capital of the limited liability
8 company or any stockholder-employees of a
9 corporation who own ten percent (10%) or more
10 stock in the corporation, unless they elect to be
11 covered by a policy of insurance covering
12 benefits under the Administrative Workers'
13 Compensation Act,
- 14 (8) any person providing or performing voluntary
15 service who receives no wages for the services
16 other than meals, drug or alcohol rehabilitative
17 therapy, transportation, lodging or reimbursement
18 for incidental expenses except for volunteers
19 specifically provided for in subparagraph a of
20 this paragraph,
- 21 (9) a person, commonly referred to as an owner-
22 operator, who owns or leases a truck-tractor or
23 truck for hire, if the owner-operator actually
24 operates the truck-tractor or truck and if the

1 person contracting with the owner-operator is not
2 the lessor of the truck-tractor or truck.

3 Provided, however, an owner-operator shall not be
4 precluded from workers' compensation coverage
5 under the Administrative Workers' Compensation
6 Act if the owner-operator elects to participate
7 as a sole proprietor,

8 (10) a person referred to as a drive-away owner-
9 operator who privately owns and utilizes a tow
10 vehicle in drive-away operations and operates
11 independently for hire, if the drive-away owner-
12 operator actually utilizes the tow vehicle and if
13 the person contracting with the drive-away owner-
14 operator is not the lessor of the tow vehicle.

15 Provided, however, a drive-away owner-operator
16 shall not be precluded from workers' compensation
17 coverage under the Administrative Workers'
18 Compensation Act if the drive-away owner-operator
19 elects to participate as a sole proprietor, and

20 (11) any person who is employed as a domestic servant
21 or as a casual worker in and about a private home
22 or household, which private home or household had
23 a gross annual payroll in the preceding calendar
24

1 year of less than Fifty Thousand Dollars
2 (\$50,000.00) for such workers;

3 19. "Employer" means a person, partnership, association,
4 limited liability company, corporation, and the legal
5 representatives of a deceased employer, or the receiver or trustee
6 of a person, partnership, association, corporation, or limited
7 liability company, departments, instrumentalities and institutions
8 of this state and divisions thereof, counties and divisions thereof,
9 public trusts, boards of education and incorporated cities or towns
10 and divisions thereof, employing a person included within the term
11 "employee" as defined in this section. Employer may also mean the
12 employer's workers' compensation insurance carrier, if applicable.
13 Except as provided otherwise, this act applies to all public and
14 private entities and institutions. Employer shall not include a
15 qualified employer with an employee benefit plan as provided under
16 the Oklahoma Employee Injury Benefit Act in Sections 107 through 120
17 of this act;

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

22 21. "Evidence-based" means expert-based, literature-supported
23 and outcomes validated by well-designed randomized trials when such
24

1 information is available and which uses the best available evidence
2 to support medical decision making;

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

6 23. "Impaired self-insurer" means a private self-insurer or
7 group self-insurance association that fails to pay its workers'
8 compensation obligations, or is financially unable to do so and is
9 the subject of any proceeding under the Federal Bankruptcy Reform
10 Act of 1978, and any subsequent amendments or is the subject of any
11 proceeding in which a receiver, custodian, liquidator,
12 rehabilitator, trustee or similar officer has been appointed by a
13 court of competent jurisdiction to act in lieu of or on behalf of
14 the self-insurer;

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

17 25. "Insurance Commissioner" means the Insurance Commissioner
18 of the State of Oklahoma;

19 26. "Insurance Department" means the Insurance Department of
20 the State of Oklahoma;

21 27. "Major cause" means more than fifty percent (50%) of the
22 resulting injury, disease or illness. A finding of major cause
23 shall be established by a preponderance of the evidence. A finding
24 that the workplace was not a major cause of the injury, disease or

1 illness shall not adversely affect the exclusive remedy provisions
2 of this act and shall not create a separate cause of action outside
3 this act;

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

7 29. "Medical services" means those services specified in
8 Section 50 of this act;

9 30. "Misconduct" shall include the following:

- 10 a. unexplained absenteeism or tardiness,
- 11 b. willful or wanton indifference to or neglect of the
12 duties required,
- 13 c. willful or wanton breach of any duty required by the
14 employer,
- 15 d. the mismanagement of a position of employment by
16 action or inaction,
- 17 e. actions or omissions that place in jeopardy the
18 health, life, or property of self or others,
- 19 f. dishonesty,
- 20 g. wrongdoing,
- 21 h. violation of a law, or
- 22 i. a violation of a policy or rule adopted to ensure
23 orderly work or the safety of self or others;
- 24

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

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

9 (b) For the purpose of making permanent
10 disability ratings to the spine, physicians
11 shall use criteria established by the most
12 current edition of the American Medical
13 Association "Guides to the Evaluation of
14 Permanent Impairment", as is approved by the
15 Legislature.

16 (3) (a) Objective evidence necessary to prove
17 permanent disability in occupational hearing
18 loss cases may be established by medically
19 recognized and accepted clinical diagnostic
20 methodologies, including, but not limited
21 to, audiological tests that measure air and
22 bone conduction thresholds and speech
23 discrimination ability.
24

1 (b) Any difference in the baseline hearing
2 levels shall be confirmed by subsequent
3 testing; provided, however, such test shall
4 be given within four (4) weeks of the
5 initial baseline hearing level test but not
6 before five (5) days after being adjusted
7 for presbycusis.

8 b. Medical opinions addressing compensability and
9 permanent disability shall be stated within a
10 reasonable degree of medical certainty;

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

14 33. "Permanent disability" means the extent, expressed as a
15 percentage, of the loss of a portion of the total physiological
16 capabilities of the human body as established by competent medical
17 evidence and based on the current edition of the American Medical
18 Association guides to the evaluation of impairment, if the
19 impairment is contained therein;

20 34. "Permanent partial disability" means a permanent disability
21 or loss of use after maximum medical improvement has been reached
22 which prevents the injured employee, who has been released to return
23 to work by the treating physician, from returning to his or her pre-

1 injury or equivalent job. All evaluations of permanent partial
2 disability must be supported by objective findings;

3 35. "Permanent total disability" means, based on objective
4 findings, incapacity, based upon accidental injury or occupational
5 disease, to earn wages in any employment for which the employee may
6 become physically suited and reasonably fitted by education,
7 training, experience or vocational rehabilitation provided under
8 this act. Loss of both hands, both feet, both legs, or both eyes,
9 or any two thereof, shall constitute permanent total disability;

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

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

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

24

1 39. "Prosthetic" means an artificial device used to replace a
2 part or joint of the body that is lost or injured in an accident or
3 illness covered by this act;

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

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

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

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

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

1 45. "Surviving spouse" means the employee's spouse by reason of
2 a legal marriage recognized by the State of Oklahoma or under the
3 requirements of a common law marriage in this state, as determined
4 by the Workers' Compensation Commission;

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

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

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

18 SECTION 2. AMENDATORY Section 5, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2014, Section 5), is amended to read as
20 follows:

21 Section 5. A. The rights and remedies granted to an employee
22 subject to the provisions of the Administrative Workers'
23 Compensation Act shall be exclusive of all other rights and remedies
24 of the employee, his legal representative, dependents, next of kin,

1 or anyone else claiming rights to recovery on behalf of the employee
2 against the employer, or any principal, officer, director, employee,
3 stockholder, partner, or prime contractor of the employer on account
4 of injury, illness, or death. Negligent acts of a co-employee may
5 not be imputed to the employer. No role, capacity, or persona of
6 any employer, principal, officer, director, employee, or stockholder
7 other than that existing in the role of employer of the employee
8 shall be relevant for consideration for purposes of this act, and
9 the remedies and rights provided by this act shall be exclusive
10 regardless of the multiple roles, capacities, or personas the
11 employer may be deemed to have. For the purpose of extending the
12 immunity of this section, any operator or owner of an oil or gas
13 well or other operation for exploring for, drilling for, or
14 producing oil or gas shall be deemed to be an intermediate or
15 principal employer for services performed at a drill site or
16 location with respect to injured or deceased workers whose immediate
17 employer was hired by such operator or owner at the time of the
18 injury or death.

19 B. Exclusive remedy shall not apply if:

20 1. An employer fails to secure the payment of compensation due
21 to the employee as required by this act. An injured employee, or
22 his or her legal representative in case death results from the
23 injury, may, at his or her option, elect to claim compensation under
24

1 this act or to maintain a legal action in court for damages on
2 account of the injury or death; or

3 2. The injury was caused by an intentional tort committed by
4 the employer. An intentional tort shall exist only when the
5 employee is injured as a result of willful, deliberate, specific
6 intent of the employer to cause such injury. Allegations or proof
7 that the employer had knowledge that the injury was substantially
8 certain to result from the employer's conduct shall not constitute
9 an intentional tort. The employee shall plead facts that show it is
10 at least as likely as it is not that the employer acted with the
11 purpose of injuring the employee. The issue of whether an act is an
12 intentional tort shall be a question of law.

13 C. The immunity from civil liability described in subsection A
14 of this section shall apply regardless of whether the injured
15 employee is denied compensation or deemed ineligible to receive
16 compensation under this act.

17 D. If an employer has failed to secure the payment of
18 compensation for his or her injured employee as provided for in this
19 act, an injured employee, or his or her legal representative if
20 death results from the injury, may maintain an action in the
21 district court for damages on account of such injury.

22 E. The immunity created by the provisions of this section shall
23 not extend to action against another employer, or its employees, on
24 the same job as the injured or deceased worker where such other

1 employer does not stand in the position of an intermediate or
2 principal employer to the immediate employer of the injured or
3 deceased worker.

4 F. The immunity created by the provisions of this section shall
5 not extend to action against another employer, or its employees, on
6 the same job as the injured or deceased worker even though such
7 other employer may be considered as standing in the position of a
8 special master of a loaned servant where such special master neither
9 is the immediate employer of the injured or deceased worker nor
10 stands in the position of an intermediate or principal employer to
11 the immediate employer of the injured or deceased worker.

12 G. This section shall not be construed to abrogate the loaned
13 servant doctrine in any respect other than that described in
14 subsection F of this section. Nothing in this act shall be
15 construed to relieve the employer from any other penalty provided
16 for in this act for failure to secure the payment of compensation
17 under this act.

18 H. For the purpose of extending the immunity of this section,
19 any architect, professional engineer, or land surveyor shall be
20 deemed an intermediate or principal employer for services performed
21 at or on the site of a construction project, but this immunity shall
22 not extend to the negligent preparation of design plans and
23 specifications.

24

1 I. If the employer has failed to secure ~~the payment of~~ workers'
2 compensation insurance or become an approved self-insured as
3 provided in this act or in the case of an intentional tort, the
4 injured employee or his or her legal representative may maintain an
5 action either before the Commission or in the district court, but
6 not both.

7 SECTION 3. AMENDATORY Section 16, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2014, Section 16), is amended to read as
9 follows:

10 Section 16. A. The Official Disability Guidelines - Treatment
11 in Workers Compensation (ODG), published by the Work Loss Data
12 Institute, is to be recognized as the ~~primary~~ only standard of
13 reference, at the time of treatment, in determining the frequency
14 and extent of services presumed to be medically necessary and
15 appropriate for compensable injuries under this act, or in resolving
16 such matters in the event a dispute arises. The medical treatment
17 guidelines are not requirements, nor are they mandates or standards;
18 they provide advice by identifying the care most likely to benefit
19 injured workers. The guidelines shall be evidence-based,
20 scientifically valid, outcome-focused, and designed to reduce
21 excessive or inappropriate medical care while safeguarding necessary
22 medical care.

23 B. Physicians providing care to an employee shall prescribe for
24 the employee any necessary prescription drugs and over-the-counter

1 alternatives to prescription medicine as clinically appropriate and
2 as recommended under the Official Disability Guidelines.
3 Prescriptions and nonprescription drugs that are not preferred,
4 exceed or are not addressed by ODG require preauthorization and the
5 preauthorization request shall include the prescribing doctor's drug
6 regimen plan of care and the anticipated dosage or range of dosages.

7 SECTION 4. This act shall become effective November 1, 2015.

8
9 55-1-779 TEK 1/22/2015 8:46:47 PM

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24