STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1818 By: Daniels

AS INTRODUCED

An Act relating to workers' compensation; amending Section 2, Chapter 208, O.S.L. 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019, Section 3, Chapter 208, O.S.L. 2013, as amended by Section 2, Chapter 476, O.S.L. 2019, Section 5, Chapter 208, O.S.L. 2013, as amended by Section 3, Chapter 476, O.S.L. 2019, Section 46, Chapter 208, O.S.L. 2019, as amended by Section 18, Chapter 476, O.S.L. 2019 and Section 80, Chapter 208, O.S.L. 2013, as amended by Section 30, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Sections 2, 3, 5, 46 and 80), which relate to definitions, applicability, exclusive liability, permanent partial disability schedule and review of compensation judgments; modifying definitions; modifying injury for which provisions apply; conforming language; modifying certain exception to exclusive remedy; increasing maximum weekly limit for certain disability awards; modifying requirements for application for change of condition; updating statutory references; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L. 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 2), is amended to read as follows:

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

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

3. "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;

4. "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);

5. "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 an employer, group self-insurance association plan, an employer's workers' compensation insurance carrier, third-party administrator or an insured to provide medical care under the Administrative Workers' Compensation Act. Certified plans shall only include plans which provide medical services and payment for services on a fee-for-service basis to medical providers;

6. "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;

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

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

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

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

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

(3) occurred by chance or from unknown causes, ~~or~~

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

(5) was not as the result of an intentional act.

b. "Compensable injury" does not include:

(1) injury to any active participant in assaults or combats which, although they may occur in the workplace, are the result of non-employment-related hostility or animus of one, both, or all of the combatants and which assault or combat amounts to a deviation from customary duties; provided, however, injuries caused by horseplay shall not be considered to be compensable injuries, except for innocent victims,

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

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

(4) injury if the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. If a biological specimen is collected within twenty-four (24) hours of the employee being injured or reporting an injury, or if at any time after the injury a biological specimen is collected by the Oklahoma Office of the Chief Medical Examiner if the injured employee does not survive for at least twenty-four (24) hours after the injury and the employee tests positive for intoxication, an illegal controlled substance, or a legal controlled substance used in contravention to a treating physician's orders, or refuses to undergo the drug and alcohol testing, there shall be a rebuttable presumption that the injury was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. This presumption may only be overcome if the employee proves by clear and convincing evidence that his or her state of intoxication had no causal relationship to the injury,

(5) any strain, degeneration, damage or harm to, or disease or condition of, the eye or musculoskeletal structure or other body part resulting from the natural results of aging, osteoarthritis, arthritis, or degenerative process including, but not limited to, degenerative joint disease, degenerative disc disease, degenerative spondylosis/spondylolisthesis and spinal stenosis, ~~or~~

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

(7) any injury resulting from an idiopathic injury or condition, or

(8) any injury resulting from an intentional act.

c. Where compensation is payable for an injury resulting from cumulative trauma, the last employer in whose employment the employee was last injuriously exposed to the trauma during a period of at least ninety (90) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer, shall alone be liable therefor, without

right to contribution from any prior employer or insurance carrier. If there is no employer in whose employment the employee was injuriously exposed to the trauma for a period of at least ninety (90) days, then the last employer in whose employment the employee was last injuriously exposed to the trauma and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefor, with right to contribution from any prior employer or insurance carrier.

d. A compensable injury shall be established by medical evidence supported by objective findings as defined in paragraph ~~31~~ 33 of this section.

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

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

~~f.~~ g. An employee who suffers a compensable injury shall be entitled to receive compensation as prescribed in ~~this act~~ the Administrative Workers' Compensation Act. Notwithstanding other provisions of law, if it is determined that a compensable injury did not occur, the employee shall not be entitled to compensation under ~~this act~~ the Administrative Workers' Compensation Act;

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

11. "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 Commission 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;

12. "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;

13. “Course and scope of employment” means an activity of any kind or character for which the employee was hired and that relates to and derives from the work, business, trade or profession of an employer, and is performed by an employee in the furtherance of the affairs or business of an employer. The term includes activities conducted on the premises of an employer or at other locations designated by an employer and travel by an employee in furtherance of the affairs of an employer that is specifically directed by the employer. This term does not include:

a. an employee’s transportation to and from his or her place of employment,

b. travel by an employee in furtherance of the affairs of an employer if the travel is also in furtherance of personal or private affairs of the employee,

c. any injury occurring in a parking lot or other common area adjacent to an employer’s place of business before the employee clocks in or otherwise begins work for the employer or after the employee clocks out or otherwise stops work for the employer unless the employer owns or maintains exclusive control over the area, or

d. any injury occurring while an employee is on a work break, unless the injury occurs while the employee is on a work break inside the employer’s facility or in

an area owned by or exclusively controlled by the employer and the work break is authorized by the employee's supervisor;

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

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

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

17. "Drive-away operations" includes 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;

18. a. "Employee" means any person, including a minor, in the service of an employer under any contract of hire or

apprenticeship, written or oral, expressed or implied, but excluding one whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer and excluding one who is required to perform work for a municipality or county or the state or federal government on having been convicted of a criminal offense or while incarcerated. "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, law enforcement officer or emergency management worker. Travel by a police officer, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

b. The term "employee" shall not include:

(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 Longshore and Harbor Workers' Compensation 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, ranching 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, ranching or horticultural workers, or any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines. This exemption applies to any period of time for which such employment exists, irrespective of whether or not the person is employed in other activities for which the exemption does not apply. If the person is employed for part of a year in exempt activities and for part of a year in nonexempt activities, the employer shall be responsible for providing workers' compensation only for the period of time for which the person is employed in nonexempt activities,

(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 division shall not be construed to include nursing homes,

(5) any person employed by an employer with five or fewer total employees, all of whom are related within the second degree by blood or marriage to the employer, all of whom are dependents living in the household of the employer, or all of whom are a combination of such relatives and dependents. If the employer is not a natural person such relative shall be related within the second degree by blood or marriage to a person who owns fifty percent (50%) or more of the employer, or such dependent shall be in the household of a person who owns fifty percent (50%) or more of 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 Administrative Workers' Compensation Act,

(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 except for volunteers specifically provided for in subparagraph a of this paragraph,

(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 Administrative Workers' Compensation Act 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 Administrative Workers' Compensation Act 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 Fifty Thousand Dollars ($50,000.00) for such workers;

19. "Employer" means a natural 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. Except as provided otherwise, ~~this act~~ the Administrative Workers' Compensation Act applies to all public and private entities and institutions;

20. "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 firefighter, peace officer or emergency management worker;

21. "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;

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

23. "Idiopathic" means an injury or condition, where neither the cause, nor the resulting injury bears any special relation to the work or to the conditions under which the act was being performed and though it occurs in the course of the employment, does not arise out of the employment;

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

~~25.~~ 26. "Insurance Commissioner" means the Insurance Commissioner of the State of Oklahoma;

~~26.~~ 27. "Insurance Department" means the Insurance Department of the State of Oklahoma;

~~27.~~ 28. "Intentional Act" means an injury occurring only when the employee is injured as a result of a willful, deliberate and specific intent to cause such injury. Knowledge that the injury was substantially certain to result from the conduct shall not constitute an intentional act. The issue of whether an act is intentional shall be a question of law;

29. "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~~ the Administrative Workers' Compensation Act and shall not create a separate cause of action outside ~~this act~~ the Administrative Workers' Compensation Act;

~~28.~~ 30. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

~~29.~~ 31. "Medical services" means those services specified in Section 50 of this title;

~~30.~~ 32. "Misconduct" shall include the following:

a. unexplained absenteeism or tardiness,

b. willful or wanton indifference to or neglect of the duties required,

c. willful or wanton breach of any duty required by the employer,

d. the mismanagement of a position of employment by action or inaction,

e. actions or omissions that place in jeopardy the health, life, or property of self or others,

f. dishonesty,

g. wrongdoing,

h. violation of a law, or

i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

~~31.~~ 33. a. (1) "Objective findings" are those findings which cannot come under the voluntary control of the patient.

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

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

"Guides to the Evaluation of Permanent Impairment".

(3) (a) Objective evidence necessary to prove permanent disability in occupational hearing loss cases may 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.

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

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

~~32.~~ 34. "Official Disability Guidelines" or "ODG" means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers' Comp as published by the Work Loss Data Institute;

~~33.~~ 35. "Permanent disability" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the Sixth Edition of the American Medical Association guides to the evaluation of impairment, if the impairment is contained therein;

~~34.~~ 36. "Permanent partial disability" means a permanent disability or loss of use after maximum medical improvement has been reached which prevents the injured employee, who has been released to return to work by the treating physician, from returning to his or her pre-injury or equivalent job. All evaluations of permanent partial disability must be supported by objective findings;

~~35.~~ 37. "Permanent total disability" means, based on objective findings, incapacity, based upon 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, experience or vocational rehabilitation provided under ~~this act~~ the Administrative Workers' Compensation Act. Loss of both hands, both feet, both legs, or both eyes, or any two thereof, shall constitute permanent total disability;

~~36.~~ 38. "Preexisting condition" means any illness, injury, disease, or other physical or mental condition, whether or not work-related, for which medical advice, diagnosis, care or treatment was recommended or received preceding the date of injury;

~~37.~~ 39. "Pre-injury or equivalent job" means the job that the claimant was working for the employer at the time the injury occurred or any other employment offered by the claimant's employer that pays at least one hundred percent (100%) of the employee's average weekly wage;

~~38.~~ 40. "Private self-insurer" means a private employer that has been authorized to self-insure its workers' compensation obligations pursuant to ~~this act~~ the Administrative Workers' Compensation Act, but does not include group self-insurance associations authorized by ~~this act~~ the Administrative Workers' Compensation Act, or any public employer that self-insures pursuant to ~~this act~~ the Administrative Workers' Compensation Act;

~~39.~~ 41. "Prosthetic" 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~~ the Administrative Workers' Compensation Act;

~~40.~~ 42. "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.~~ 43. "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.~~ 44. "State average weekly wage" means the state average weekly wage determined by the Oklahoma Employment Security Commission in the preceding calendar year. If such determination is not available, the Commission shall determine the wage annually after reasonable investigation;

~~43.~~ 45. "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;

~~44.~~ 46. "Surgery" does not include an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis;

~~45.~~ 47. "Surviving spouse" means the employee's spouse by reason of a legal marriage recognized by the State of Oklahoma or under the requirements of a common law marriage in this state, as determined by the Workers' Compensation Commission;

~~46.~~ 48. "Temporary partial disability" means an injured employee who is temporarily unable to perform his or her job, but may perform alternative work offered by the employer;

~~47.~~ 49. "Time of accident" or "date of accident" means the time or date of the occurrence of the accidental incident from which compensable injury, disability, or death results; and

~~48.~~ 50. "Wages" means money compensation received for employment at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer and includes the amount of tips required to be reported by the employer under Section 6053 of the Internal Revenue Code and the regulations promulgated pursuant thereto or the amount of actual tips reported, whichever amount is greater.

SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L. 2013, as amended by Section 2, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 3), is amended to read as follows:

Section 3. A. Every employer and every employee, unless otherwise specifically provided in ~~this act~~ the Administrative Workers' Compensation Act, shall be subject and bound to the provisions of the Administrative Workers' Compensation Act and every employer shall pay or provide benefits according to the provisions of ~~this act~~ the Administrative Workers' Compensation Act for the ~~accidental~~ compensable injury or death of an employee arising out of and in the course of his or her employment, without regard to fault for such injury, if the employee's contract of employment was made or if the injury occurred within this state. If an employee makes a claim for an injury in another jurisdiction, the employee is precluded from his or her right of action under the Administrative Workers' Compensation Act unless the Workers' Compensation Commission determines that there is a change in circumstances that

creates a good cause to bring the claim under the Administrative Workers' Compensation Act; provided, however, that the employee may not receive duplicate benefits to those received in the foreign jurisdiction and the employee's right to bring a claim under ~~this act~~ the Administrative Workers' Compensation Act shall be subject to the limitations period for bringing a claim pursuant to paragraph 1 of subsection A of Section 69 of this title. Nothing in ~~this act~~ the Administrative Workers' Compensation Act shall be construed to conflict with any valid Act of Congress governing the liability of employers for injuries received by their employees.

B. The State of Oklahoma accepts the provisions of the Acts of Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C., Section 290, and hereby extends the territorial jurisdiction of the Administrative Workers' Compensation Act of this state to all lands and premises within the exterior boundaries of this state which the Government of the United States of America owns or holds by deed or act of cession, and to all purchases, projects, buildings, constructions, improvements and property within the exterior boundaries of this state belonging to the Government of the United States of America, in the same manner and to the same extent as if the premises were under the exclusive jurisdiction of this state, subject only to the limitations placed thereon by the Acts of Congress.

C. The Administrative Workers' Compensation Act shall apply only to claims for injuries and death ~~based on accidents~~ which occur on or after February 1, 2014.

D. The Workers' Compensation Code in effect before February 1, 2014, shall govern all rights in respect to claims for injuries and death ~~based on accidents~~ occurring before February 1, 2014.

SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L. 2013, as amended by Section 3, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 5), is amended to read as follows:

Section 5. A. The rights and remedies granted to an employee subject to the provisions of the Administrative Workers' Compensation Act shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone else claiming rights to recovery on behalf of the employee against the employer, or any principal, officer, director, employee, stockholder, partner, or prime contractor of the employer on account of injury, illness, or death. Negligent acts of a co-employee may not be imputed to the employer. No role, capacity, or persona of any employer, principal, officer, director, employee, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of ~~this act~~ <u>the Administrative Workers' Compensation Act</u>, and the remedies and rights provided by ~~this act~~ <u>the Administrative Workers' Compensation</u>

Act shall be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have.

B. Exclusive remedy shall not apply if:

1. An employer fails to secure the payment of compensation due to the employee as required by ~~this act~~ the Administrative Workers' Compensation Act. An injured employee, or his or her legal representative in case death results from the injury, may, at his or her option, elect to claim compensation under ~~this act~~ the Administrative Workers' Compensation Act or to maintain a legal action in court for damages on account of the injury or death; or

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

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

compensation under ~~this act~~ the Administrative Workers' Compensation Act.

D. If an employer has failed to secure the payment of compensation for his or her injured employee as provided for in ~~this act~~ the Administrative Workers' Compensation Act, an injured employee, or his or her legal representative if death results from the injury, may maintain an action in the district court for damages on account of such injury.

E. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker.

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

G. This section shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in

subsection F of this section. Nothing in ~~this act~~ the Administrative Workers' Compensation Act shall be construed to relieve the employer from any other penalty provided for in ~~this act~~ the Administrative Workers' Compensation Act for failure to secure the payment of compensation under ~~this act~~ the Administrative Workers' Compensation Act.

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

I. If the employer has failed to secure the payment of compensation as provided in ~~this act~~ the Administrative Workers' Compensation Act or in the case of an intentional ~~tort~~ act, the injured employee or his or her legal representative may maintain an action either before the Commission or in the district court, but not both.

SECTION 4. AMENDATORY Section 46, Chapter 208, O.S.L. 2013, as amended by Section 18, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 46), is amended to read as follows:

Section 46. A. An injured employee who is entitled to receive permanent partial disability compensation under Section 45 of this title shall receive compensation for each part of the body in

accordance with the number of weeks for the scheduled loss set forth below.

1. Arm amputated at the elbow, or between the elbow and shoulder, two hundred seventy-five (275) weeks;

2. Arm amputated between the elbow and wrist, two hundred twenty (220) weeks;

3. Leg amputated at the knee, or between the knee and the hip, two hundred seventy-five (275) weeks;

4. Leg amputated between the knee and the ankle, two hundred twenty (220) weeks;

5. Hand amputated, two hundred twenty (220) weeks;

6. Thumb amputated, sixty-six (66) weeks;

7. First finger amputated, thirty-nine (39) weeks;

8. Second finger amputated, thirty-three (33) weeks;

9. Third finger amputated, twenty-two (22) weeks;

10. Fourth finger amputated, seventeen (17) weeks;

11. Foot amputated, two hundred twenty (220) weeks;

12. Great toe amputated, thirty-three (33) weeks;

13. Toe other than great toe amputated, eleven (11) weeks;

14. Eye enucleated, in which there was useful vision, two hundred seventy-five (275) weeks;

15. Loss of hearing of one ear, one hundred ten (110) weeks;

16. Loss of hearing of both ears, three hundred thirty (330) weeks; and

17. Loss of one testicle, fifty-three (53) weeks; loss of both testicles, one hundred fifty-eight (158) weeks.

B. The permanent partial disability rate of compensation for amputation or permanent total loss of use of a scheduled member specified in this section shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Fifty Dollars ($350.00) with an increase to Three Hundred Sixty Dollars ($360.00) on July 1, 2021, multiplied by the number of weeks as set forth in this section, regardless of whether or not the injured employee is able to return to his or her pre-injury job.

C. Other cases: In cases in which the Workers' Compensation Commission finds an injury to a part of the body not specifically covered by the foregoing provisions of this section, the employee may be entitled to compensation for permanent partial disability. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Fifty Dollars ($350.00) with an increase to Three Hundred Sixty Dollars ($360.00) on July 1, 2021, for the number of weeks which the partial disability of the employee bears to ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

D. 1. Compensation for amputation of the first phalange of a digit shall be one-half (1/2) of the compensation for the amputation of the entire digit.

2. Compensation for amputation of more than one phalange of a digit shall be the same as for amputation of the entire digit.

E. 1. Compensation for the permanent loss of eighty percent (80%) or more of the vision of an eye shall be the same as for the loss of an eye.

2. In all cases of permanent loss of vision, the use of corrective lenses may be taken into consideration in evaluating the extent of loss of vision.

F. Compensation for amputation or loss of use of two or more digits or one or more phalanges of two or more digits of a hand or a foot may be proportioned to the total loss of use of the hand or the foot occasioned thereby but shall not exceed the compensation for total loss of a hand or a foot.

G. Compensation for permanent total loss of use of a member shall be the same as for amputation of the member.

H. The sum of all permanent partial disability awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

SECTION 5. AMENDATORY Section 80, Chapter 208, O.S.L. 2013, as amended by Section 30, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Section 80), is amended to read as follows:

Section 80. A. A final order for permanent disability is a final adjudication of all issues pending in the claim unless reserved in the order or by operation of law. Except where a joint

petition settlement has been approved, the Workers' Compensation Commission may review any compensation judgment, award, or decision. Such review may be done upon application for a change of condition for the worse at any time within six (6) months from the date of the last order in which monetary benefits were awarded or active medical treatment was provided, on the Commission's own motion or on the application of any party in interest, and unless filed within such period of time shall be forever barred. On review, the Commission may make a judgment or award terminating, continuing, decreasing, or increasing for the future the compensation previously awarded, subject to the maximum limits provided for in this title. An order denying an application to reopen a claim shall not extend the period of time set out in this title for reopening the claim. A failure to comply with a medical treatment plan ordered by the Commission shall bar the reopening of a claim. An application for a finding of a change of condition for the better may be filed at any time for good cause shown.

B. The review and subsequent award shall be made in accordance with the procedure prescribed in Sections 69 through 78 of this title. No review shall affect any compensation paid under a prior order, judgment or award.

C. The Commission may correct any clerical error in any compensation judgment or award within one (1) year from the date of its issuance.

D. Aging and the effects of aging on a compensable injury are not to be considered in determining whether there has been a change in physical condition. Aging or the effect of aging on a compensable injury shall not be considered in determining permanent disability under this section or any other section in ~~this act~~ the Administrative Workers' Compensation Act.

SECTION 6. This act shall become effective November 1, 2020.

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