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WORKERS' COMPENSATION—LIABILITY—SCHEDULE OF  
COMPENSATION—LIMITATION OF ACTIONS—  
SPECIAL INDEMNITY FUND

CHAPTER 266

S.B.No. 158

AN ACT RELATING TO WORKERS' COMPENSATION; AMENDING  
85 O.S. 1981, SECTIONS 3, 11, 22, 43, 173 AND 174,  
WHICH RELATE TO COMPENSATION UNDER WORKERS'  
COMPENSATION ACT AND SPECIAL INDEMNITY FUND;  
DEFINING TERMS; MODIFYING CERTAIN TERMS; REQUIRING  
TOTAL COMPLIANCE WITH CERTAIN GUIDELINES;  
MANDATING CERTAIN PAYMENTS BY EMPLOYERS FOR  
CERTAIN PURPOSES RELATING TO WORKERS'  
COMPENSATION; PROVIDING FOR CERTAIN LIABILITY;  
MODIFYING CERTAIN LIABILITY OF FARMERS AND  
RESIDENTIAL HOMEOWNERS; MODIFYING AVERAGE WEEKLY  
WAGE DETERMINATION PROCEDURES; SETTING STATUTE OF  
LIMITATIONS FOR CLAIM AT TWO YEARS; REQUIRING  
POSTING OF NOTICE OF COVERAGE; REQUIRING NO  
FURTHER NOTICE; DISALLOWING TOLLING OF STATUTE OF  
LIMITATIONS UNDER CERTAIN CONDITIONS; INCREASING  
PAYMENTS TO SPECIAL INDEMNITY FUND BY INSURERS AND  
SELF-INSURERS AND FROM EMPLOYEE AWARDS; INCREASING  
PAYMENT TO SPECIAL INDEMNITY FUND BY POLITICAL AND  
MUNICIPAL SUBDIVISIONS; RESTRICTING APPLICATION OF  
ACT; PROVIDING FOR NONCODIFICATION; REPEALING 85  
O.S. 1981, SECTION 8, WHICH RELATES TO NOTICE;  
PROVIDING EFFECTIVE DATES; AND DECLARING AN  
EMERGENCY.

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

SECTION 1. AMENDATORY 85 O.S. 1981, Section 3, is amended  
to read as follows:

Section 3. As used in the Workers' Compensation Act:

(1) "Administrator" means the Administrator of workers'  
compensation as provided for in the Workers' Compensation Act.

(2) "Court" means the Workers' Compensation Court.

(3) "Employer", except when otherwise expressly stated, means a  
person, partnership, association, corporation, and the legal  
representatives of a deceased employer, or the receiver or trustee of  
a person, partnership, association or corporation, departments,  
instrumentalities and institutions of this state and divisions  
thereof, counties and divisions thereof, public trusts, boards of  
education and incorporated cities or towns and divisions thereof,  
employing a person included within the term "employee" as herein  
defined.

(4) "Employee" means any person engaged in the employment of any  
person, firm or corporation covered by the terms of the Workers'  
Compensation Act, and shall include workers associating themselves  
together under an agreement for the performance of a particular piece  
of work, in which event such persons so associating themselves  
together shall be deemed employees of the person having the work  
executed; provided, that if such associated workers shall employ a

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worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Sole proprietors, members of a partnership or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors or members of a partnership or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a firefighter, peace officer or civil defense worker.

(5) "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer for pecuniary gain or any authorized voluntary or uncompensated worker rendering services as a firefighter, peace officer or civil defense worker.

(6) "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act.

(7) "Injury or personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined.

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

(9) "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay compensation, directly under the provisions of subsection (d) of Section 61 of this title.

(10) "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.

(11) "Permanent impairment" means any anatomical or functional abnormality or loss after reasonable medical treatment has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Any Except as otherwise provided herein, any examining physician shall only evaluate impairment in substantial accordance with such guides to the evaluation of permanent impairment as have been officially approved by a majority of the Workers' Compensation Court. These guides may include, but shall not be limited to, the latest "Guides to the Evaluation of Permanent Impairment" adopted and published in 1971 by the American Medical Association. The Court shall be empowered to add, delete or revise its guides as its majority sees

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~~fit--The Court shall arrange for appropriate notice and distribution of those guides which it adopts, deletes or revises~~ The examining physician shall not deviate from said guides except as may be specifically provided for in the guides. These officially adopted guides shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss, and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides.

~~In any case where the examining physician deviates from said guides the basis for said deviation shall be stated-~~

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

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

~~SECTION 2. AMENDATORY. 85 O.S. 1981, Section 11, is amended to read as follows:~~

~~Section 11. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment, without regard to fault as a cause of such injury, and in the event of disability only, except where the injury is occasioned by the willful intention of the injured employee to bring about injury to himself or of another, or where the injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for his use pursuant to any statute or by order of the Commissioner of Labor, or results directly from the intoxication or drug or chemical abuse of the injured employee while on duty. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:~~

~~1. The independent contractor shall, at all times, be liable for compensation due to his direct employees, or the employees of any subcontractor or 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.~~

~~2. The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by his or their independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it~~

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may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Special Indemnity Fund. The State Treasurer shall pay by vouchers drawn on the Special Indemnity Fund for the making of such investments, when signed by the Commissioner and approved by the Board of Managers of the State Insurance Fund, upon delivery of such securities or evidence of indebtedness to him. The Commissioner may, upon like approval of the Board of Managers of the State Insurance Fund, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Special Indemnity Fund.

(g) The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Special Indemnity Fund. Refunds shall be paid from and out of the Special Indemnity Fund.

(h) The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Special Indemnity Fund all monies collected under the provisions of this section. The State Treasurer shall pay out of the Special Indemnity Fund only upon the order and direction of the Court of this state acting under the provisions hereof.

SECTION 6. AMENDATORY 85 O.S. 1981, Section 174, is amended to read as follows:

Section 174. Every political or municipal subdivision of the state, covered by the provisions of the Workers' Compensation Act, including counties, cities, and towns, each shall provide sufficient funds in its annual estimate of the needs based on the total compensation paid out or benefits or payments in lieu thereof by such political or municipal subdivision during the prior fiscal year, to pay the amount due under the Workers' Compensation Act for the use and purpose of such Special Indemnity Fund, an amount equal to ~~two percent (2%)~~ three percent (3%) of the amount of compensation awards for permanent total disability or permanent partial disability made by the Court for all employees employed by them. It shall be the duty of the excise board of each county to approve an appropriation in such amount as may be necessary to pay such sum.

SECTION 7. NEW LAW A new section of law not to be codified in the Oklahoma Statutes, reads as follows:

The provisions of Sections 1, 2 and 4 of this act shall apply only to cases filed in the Workers' Compensation Court on or after the effective date of this act.

SECTION 8. REPEALER 85 O.S. 1981, Section 8, is hereby repealed.

SECTION 9.<sup>87</sup> Sections 1, 2 and 4 of this act shall become effective November 1, 1985. Sections 3, 5 and 6 of this act shall become effective July 1, 1985.

Approved July 15, 1985. Emergency.

87. 85 O.S. Supp. 1985, § 3 note.

Section 1 effective 11/1/85 for all cases filed on or after that date.

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