

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1326

By: Daniels

AS INTRODUCED

An Act relating to workers' compensation; amending Sections 2, Chapter 208, O.S.L. 2013, as last amended by Section 1, Chapter 476, O.S.L. 2019, 3 and 5, Chapter 208, O.S.L. 2013, as amended by Sections 2 and 3, Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019, Sections 2, 3 and 5), which relate to definitions, applicability and exclusive liability; modifying definition; clarifying applicability of act; clarifying exception to exclusive remedy; 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

1 on the business of workers' compensation insurance in this state.

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

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

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

- 21 a. Certified Disability Management Specialist (CDMS),
- 22 b. Certified Case Manager (CCM),
- 23 c. Certified Rehabilitation Registered Nurse (CRRN),
- 24 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

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 damage or harm to
9 prosthetic appliances, including eyeglasses, contact
10 lenses, or hearing aids, of which the major cause is
11 either an accident, cumulative trauma ~~or~~, occupational
12 disease, or the employer's knowledge that injury was
13 substantially certain to result from the employer's
14 conduct, arising out of the course and scope of
15 employment. An "accident" means an event involving
16 factors external to the employee that:

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

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

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

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

24 b. "Compensable injury" does not include:
25

- (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

1 spondylosis/spondylolisthesis and spinal
2 stenosis, or

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

7 c. A compensable injury shall be established by medical
8 evidence supported by objective findings as defined in
9 paragraph 31 of this section.

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

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

20 f. An employee who suffers a compensable injury shall be
21 entitled to receive compensation as prescribed in this
22 act. Notwithstanding other provisions of law, if it
23 is determined that a compensable injury did not occur,
24

1 the employee shall not be entitled to compensation
2 under this act;

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

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

13 12. "Continuing medical maintenance" means medical treatment
14 that is reasonable and necessary to maintain claimant's condition
15 resulting from the compensable injury or illness after reaching
16 maximum medical improvement. Continuing medical maintenance shall
17 not include diagnostic tests, surgery, injections, counseling,
18 physical therapy, or pain management devices or 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 unless the
14 employer owns or maintains exclusive control over the
15 area, or
- 16 d. any injury occurring while an employee is on a work
17 break, unless the injury occurs while the employee is
18 on a work break inside the employer's facility or in
19 an area owned by or exclusively controlled by the
20 employer and the work break is authorized by the
21 employee's supervisor;

22 14. "Cumulative trauma" means an injury to an employee that is
23 caused by the combined effect of repetitive physical activities
24 extending over a period of time in the course and scope of

1 employment. Cumulative trauma shall not mean fatigue, soreness or
2 general aches and pain that may have been caused, aggravated,
3 exacerbated or accelerated by the employee's course and scope of
4 employment. Cumulative trauma shall have resulted directly and
5 independently of all other causes;

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

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

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

17 18. a. "Employee" means any person, including a minor, in the
18 service of an employer under any contract of hire or
19 apprenticeship, written or oral, expressed or implied,
20 but excluding one whose employment is casual and not
21 in the course of the trade, business, profession, or
22 occupation of his or her employer and excluding one
23 who is required to perform work for a municipality or
24 county or the state or federal government on having
25

1 been convicted of a criminal offense or while
2 incarcerated. "Employee" shall also include a member
3 of the Oklahoma National Guard while in the
4 performance of duties only while in response to state
5 orders and any authorized voluntary or uncompensated
6 worker, rendering services as a firefighter, law
7 enforcement officer or emergency management worker.
8 Travel by a police officer, fireman, or a member of a
9 first aid or rescue squad, in responding to and
10 returning from an emergency, shall be deemed to be in
11 the course of employment.

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

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

1 year of less than One Hundred Thousand Dollars
2 (\$100,000.00) wages for agricultural, ranching or
3 horticultural workers, or any person who is
4 employed in agriculture, ranching or horticulture
5 who is not engaged in operation of motorized
6 machines. This exemption applies to any period
7 of time for which such employment exists,
8 irrespective of whether or not the person is
9 employed in other activities for which the
10 exemption does not apply. If the person is
11 employed for part of a year in exempt activities
12 and for part of a year in nonexempt activities,
13 the employer shall be responsible for providing
14 workers' compensation only for the period of time
15 for which the person is employed in nonexempt
16 activities,

- 17 (3) any person who is a licensed real estate sales
18 associate or broker, paid on a commission basis,
19 (4) any person who is providing services in a medical
20 care or social services program, or who is a
21 participant in a work or training program,
22 administered by the Department of Human Services,
23 unless the Department is required by federal law
24 or regulations to provide workers' compensation

1 for such person. This division shall not be
2 construed to include nursing homes,

3 (5) any person employed by an employer with five or
4 fewer total employees, all of whom are related
5 within the second degree by blood or marriage to
6 the employer, all of whom are dependents living
7 in the household of the employer, or all of whom
8 are a combination of such relatives and
9 dependents. If the employer is not a natural
10 person such relative shall be related within the
11 second degree by blood or marriage to a person
12 who owns fifty percent (50%) or more of the
13 employer, or such dependent shall be in the
14 household of a person who owns fifty percent
15 (50%) or more of the employer,

16 (6) any person employed by an employer which is a
17 youth sports league which qualifies for exemption
18 from federal income taxation pursuant to federal
19 law,

20 (7) sole proprietors, members of a partnership,
21 individuals who are party to a franchise
22 agreement as set out by the Federal Trade
23 Commission franchise disclosure rule, 16 CFR
24 436.1 through 436.11, members of a limited

1 liability company who own at least ten percent
2 (10%) of the capital of the limited liability
3 company or any stockholder-employees of a
4 corporation who own ten percent (10%) or more
5 stock in the corporation, unless they elect to be
6 covered by a policy of insurance covering
7 benefits under the Administrative Workers'
8 Compensation Act,

9 (8) any person providing or performing voluntary
10 service who receives no wages for the services
11 other than meals, drug or alcohol rehabilitative
12 therapy, transportation, lodging or reimbursement
13 for incidental expenses except for volunteers
14 specifically provided for in subparagraph a of
15 this paragraph,

16 (9) a person, commonly referred to as an owner-
17 operator, who owns or leases a truck-tractor or
18 truck for hire, if the owner-operator actually
19 operates the truck-tractor or truck and if the
20 person contracting with the owner-operator is not
21 the lessor of the truck-tractor or truck.

22 Provided, however, an owner-operator shall not be
23 precluded from workers' compensation coverage
24 under the Administrative Workers' Compensation
25

1 Act if the owner-operator elects to participate
2 as a sole proprietor,

3 (10) a person referred to as a drive-away owner-
4 operator who privately owns and utilizes a tow
5 vehicle in drive-away operations and operates
6 independently for hire, if the drive-away owner-
7 operator actually utilizes the tow vehicle and if
8 the person contracting with the drive-away owner-
9 operator is not the lessor of the tow vehicle.
10 Provided, however, a drive-away owner-operator
11 shall not be precluded from workers' compensation
12 coverage under the Administrative Workers'
13 Compensation Act if the drive-away owner-operator
14 elects to participate as a sole proprietor, and

15 (11) any person who is employed as a domestic servant
16 or as a casual worker in and about a private home
17 or household, which private home or household had
18 a gross annual payroll in the preceding calendar
19 year of less than Fifty Thousand Dollars
20 (\$50,000.00) for such workers;

21 19. "Employer" means a natural person, partnership,
22 association, limited liability company, corporation, and the legal
23 representatives of a deceased employer, or the receiver or trustee
24 of a person, partnership, association, corporation, or limited

1 liability company, departments, instrumentalities and institutions
2 of this state and divisions thereof, counties and divisions thereof,
3 public trusts, boards of education and incorporated cities or towns
4 and divisions thereof, employing a person included within the term
5 "employee" as defined in this section. Employer may also mean the
6 employer's workers' compensation insurance carrier, if applicable.
7 Except as provided otherwise, this act applies to all public and
8 private entities and institutions;

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

13 21. "Evidence-based" means expert-based, literature-supported
14 and outcomes validated by well-designed randomized trials when such
15 information is available and which uses the best available evidence
16 to support medical decision making;

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

20 23. "Impaired self-insurer" means a private self-insurer or
21 group self-insurance association that fails to pay its workers'
22 compensation obligations, or is financially unable to do so and is
23 the subject of any proceeding under the Federal Bankruptcy Reform
24 Act of 1978, and any subsequent amendments or is the subject of any

1 proceeding in which a receiver, custodian, liquidator,
2 rehabilitator, trustee or similar officer has been appointed by a
3 court of competent jurisdiction to act in lieu of or on behalf of
4 the self-insurer;

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

7 25. "Insurance Commissioner" means the Insurance Commissioner
8 of the State of Oklahoma;

9 26. "Insurance Department" means the Insurance Department of
10 the State of Oklahoma;

11 27. "Major cause" means more than fifty percent (50%) of the
12 resulting injury, disease or illness. A finding of major cause
13 shall be established by a preponderance of the evidence. A finding
14 that the workplace was not a major cause of the injury, disease or
15 illness shall not adversely affect the exclusive remedy provisions
16 of this act and shall not create a separate cause of action outside
17 this act;

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

21 29. "Medical services" means those services specified in
22 Section 50 of this title;

23 30. "Misconduct" shall include the following:

24 a. unexplained absenteeism or tardiness,
25

- 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. 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

1 Edition of the American Medical Association
2 "Guides to the Evaluation of Permanent
3 Impairment".

4 (3) (a) Objective evidence necessary to prove
5 permanent disability in occupational hearing
6 loss cases may be established by medically
7 recognized and accepted clinical diagnostic
8 methodologies, including, but not limited
9 to, audiological tests that measure air and
10 bone conduction thresholds and speech
11 discrimination ability.

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

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

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

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

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

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

20 36. "Preexisting condition" means any illness, injury, disease,
21 or other physical or mental condition, whether or not work-related,
22 for which medical advice, diagnosis, care or treatment was
23 recommended or received preceding the date of injury;
24

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

6 38. "Private self-insurer" means a private employer that has
7 been authorized to self-insure its workers' compensation obligations
8 pursuant to this act, but does not include group self-insurance
9 associations authorized by this act, or any public employer that
10 self-insures pursuant to this act;

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

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

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

1 42. "State average weekly wage" means the state average weekly
2 wage determined by the Oklahoma Employment Security Commission in
3 the preceding calendar year. If such determination is not
4 available, the Commission shall determine the wage annually after
5 reasonable investigation;

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

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

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

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

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

21 48. "Wages" means money compensation received for employment at
22 the time of the accident, including the reasonable value of board,
23 rent, housing, lodging, or similar advantage received from the
24 employer and includes the amount of tips required to be reported by

1 the employer under Section 6053 of the Internal Revenue Code and the
2 regulations promulgated pursuant thereto or the amount of actual
3 tips reported, whichever amount is greater.

4 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
5 2013, as amended by Section 2, Chapter 476, O.S.L. 2019 (85A O.S.
6 Supp. 2019, Section 3), is amended to read as follows:

7 Section 3. A. Every employer and every employee, unless
8 otherwise specifically provided in this act, shall be subject and
9 bound to the provisions of the Administrative Workers' Compensation
10 Act and every employer shall pay or provide benefits according to
11 the provisions of this act for the ~~accidental~~ compensable injury to
12 or death of an employee arising out of and in the course of his or
13 her employment, without regard to fault for such injury, if the
14 employee's contract of employment was made or if the injury occurred
15 within this state. If an employee makes a claim for an injury in
16 another jurisdiction, the employee is precluded from his or her
17 right of action under the Administrative Workers' Compensation Act
18 unless the Workers' Compensation Commission determines that there is
19 a change in circumstances that creates a good cause to bring the
20 claim under the Administrative Workers' Compensation Act; provided,
21 however, that the employee may not receive duplicate benefits to
22 those received in the foreign jurisdiction and the employee's right
23 to bring a claim under this act shall be subject to the limitations
24 period for bringing a claim pursuant to paragraph 1 of subsection A

1 of Section 69 of this title. Nothing in this act shall be construed
2 to conflict with any valid Act of Congress governing the liability
3 of employers for injuries received by their employees.

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

17 C. The Administrative Workers' Compensation Act shall apply
18 only to claims for compensable injuries and death ~~based on accidents~~
19 arising out of the course and scope of employment which occur on or
20 after February 1, 2014.

21 D. The Workers' Compensation Code in effect before February 1,
22 2014, shall govern all rights in respect to claims for compensable
23 injuries and death ~~based on accidents~~ arising out of the course and
24 scope of employment occurring before February 1, 2014.

1 SECTION 3. AMENDATORY Section 5, Chapter 208, O.S.L.

2 2013, as amended by Section 3, Chapter 476, O.S.L. 2019 (85A O.S.
3 Supp. 2019, Section 5), is amended to read as follows:

4 Section 5. A. The rights and remedies granted to an employee
5 subject to the provisions of the Administrative Workers'
6 Compensation Act shall be exclusive of all other rights and remedies
7 of the employee, his legal representative, dependents, next of kin,
8 or anyone else claiming rights to recovery on behalf of the employee
9 against the employer, or any principal, officer, director, employee,
10 stockholder, partner, or prime contractor of the employer on account
11 of injury, illness, or death. Negligent acts of a co-employee may
12 not be imputed to the employer. No role, capacity, or persona of
13 any employer, principal, officer, director, employee, or stockholder
14 other than that existing in the role of employer of the employee
15 shall be relevant for consideration for purposes of this act, and
16 the remedies and rights provided by this act shall be exclusive
17 regardless of the multiple roles, capacities, or personas the
18 employer may be deemed to have.

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~~ The employer's knowledge that the injury was
8 substantially certain to result from the employer's conduct shall
9 not constitute an intentional tort for the purposes of application
10 of exclusive remedy under the Administrative Workers' Compensation
11 Act. ~~The employee shall plead facts that show it is at least as~~
12 ~~likely as it is not that the employer acted with the purpose of~~
13 ~~injuring the employee.~~ The issue of whether an act is an
14 intentional tort shall be a question of law.

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

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

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

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

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

21 H. For the purpose of extending the immunity of this section,
22 any architect, professional engineer, or land surveyor shall be
23 deemed an intermediate or principal employer for services performed
24 at or on the site of a construction project, but this immunity shall

1 not extend to the negligent preparation of design plans and
2 specifications.

3 I. If the employer has failed to secure the payment of
4 compensation as provided in this act or in the case of an
5 intentional tort, the injured employee or his or her legal
6 representative may maintain an action either before the Commission
7 or in the district court, but not both.

8 SECTION 4. This act shall become effective November 1, 2020.

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