



OKLAHOMA WORKERS' COMP. LAW CHANGES

2019-2020

OKLAHOMA WORKERS' COMPENSATION

Some Oklahoma Workers' Compensation Law Changes May Not Be "OK" for Employers

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CHANGES TO THE WORKERS' COMPENSATION LAWS

Oklahoma has been the home to numerous changes in its workers' compensation laws in the past five years. It first introduced an opt-out option, similar to its neighbors in Texas, in which employers could choose not to carry workers' compensation coverage. That was found unconstitutional by their Supreme Court in 2016. Then, there were numerous workers' compensation system reforms in 2018. But 2019 brought broad system changes with House Bill 2367. The bill as introduced, reformed the entire Oklahoma workers' compensation Act—making it 187 pages long.

While not intended to be a comprehensive summary of the new law, this article reviews some of the major changes in Oklahoma law that employers should familiarize themselves with.



First, these new laws expand workers' compensation coverage to recognize compensable injuries in areas on the business premises where the employer "owns or maintains exclusive control." This may include break/lunchroom areas, locker room/gym areas and could even include parking lots.

The law changes the requirement of cumulative trauma/repetitive motion injuries, so that they can be claimed when the employee has served less than six months of service with the employer (instead of the prior six-month requirement). The state has also tightened requirements for businesses to reject workers' compensation insurance, when all of their employees are relatives, so it would be important to check with your agent to assure that your company remains in compliance with new Oklahoma laws.

There are some benefits to employers with the new law. First, it clarifies that a worker may not claim benefits in one state and then receive duplicate benefits in Oklahoma. Also, owner/operators of an active oil/gas site are no longer considered the principal employer for workers injured on a site, when those workers are placed there by a subcontractor.

Meanwhile, if an employer retaliates against an employee filing a workers' compensation claim, the penalties could be up to \$100,000. (The injured worker has the full burden of proof in these cases.) The new law still includes penalties for employers of \$1,000 per day for failure to carry work compensation coverage, but now caps those fines at \$50,000 and allows the State to garnish an employer's income where a judgement is found against them.

The law also expands lost wage benefits from 104 weeks to 156 weeks. However, it does allow employers/carriers, to recover overpayments for wages inadvertently paid. It clarifies that wage payments will stop if an injured worker fails to comply with treatment for sixty days. But the law has eliminated the hold on settlement payments if the employee returns to their pre-injury job at pre-injury wages. (In the past, carriers had to hold these awards in reserve, even if the worker refused to return to work.)

THE LAW EXPANDS LOST WAGES BENEFITS

104 TO **156**
WEEKS

The law raises the maximum Permanent Partial Disability (PPD) award to \$350/week for 2019 and 2020, and a PPD rate increase to \$360/week in 2021, with the maximum number of weeks increased to 360. It also struck most of the statute dealing with automatic vocational rehabilitation, requiring instead that a judge order this benefit. If the employer pays for tuition related to vocational rehab, they can no longer deduct those costs from compensation paid to the employee. In addition, if a doctor declares a wound fully healed, an injured worker may qualify for a disfigurement award earlier than the



**MAXIMUM PERMANENT
PARTIAL DISABILITY**

\$350
PER WEEK

one-year requirement, under previous law. Also, if a claimant fails to obey an order by the Commission, they are barred from receiving ANY lost wages. In addition, employees whose injuries involve asbestosis/silicosis are no longer automatically considered permanently and totally disabled and will instead have permanency ratings awarded, based on the individual facts of each case. Recent Oklahoma court cases have also influenced the precedent for treatment. In instances where the injured worker has been prescribed opioids for pain control and consequently became addicted to these pain killers, the employer/carrier could be obligated to pay for addiction treatment.

Injured workers may now only make a claim within six months of their injury, rather than up to a year under previous law. It also allows for surviving spouses and children to petition to continue permanent partial disability benefits, upon the death of the injured worker.

Reopening a claim, after settlement, is barred after six months and each party is responsible for their own legal expenses. Injured workers who are incarcerated may still receive some medical care, but payment of their wage benefits cease.



This lengthy law includes numerous other changes, with a great deal of modernization of the language in the statute, as well as electronic information reporting and updating the laws dealing with privacy and protection of personal information. While it changed tax assessments to insurance carriers and self-insureds it also adds taxes to injured workers as well. Three percent of each Permanent Partial Disability or Permanent Total Disability award is removed from payment to the injured worker and paid to the Oklahoma Tax Commission for the Multiple Injury Trust Fund (Subsequent Injury Fund in many other states.) This fund pays benefits when an injured worker may make a claim for a subsequent injury (>50% impairment OR amputation) under that program and access to the fund ends at eight years, instead of 15. It stops access to the fund at age 65 and an injured worker may not have reached a monetary settlement for their injury and access this fund for a duplicate payment. Lastly, claims against the multi-injury fund are barred after one year post final order by a judge (lowered from two years).

One million dollars of the Multi Injury Trust Fund was moved on 7/1/19 to the Oklahoma OSHA to pay expenses of that department, while \$2.75 million was moved between the Workers' Compensation Administration Fund and the Workers' Compensation Commission Revolving Fund through June, 2020.

About the Author: Sonja Guenther has more than forty years in the insurance industry and is a recognized national expert in the field of workers' compensation insurance. Along with drafting several pieces of legislation, she is a published author of and contributor to numerous workers' compensation articles and an awarded speaker in both local and national platforms. She holds a Bachelor of Science degree in Criminal Justice and a Master of Science degree in Communication, both from Regis University in Denver, Colorado.

