OKLAHOMA WORKERS’ COMPENSATION

   A. Act will apply where:
      1. Injuries received and occupational diseases contracted in Oklahoma.
      2. Contract of employment made in Oklahoma and employee was acting in the course of such employment under the discretion of the employer.
      3. Claimant may not receive workers’ compensation benefits in Oklahoma if claimant received benefits in another state for said injury and the claim was prosecuted to final determination in said state.

II. EXCLUSION FROM THE ACT
   A. Any person who is employed as a domestic servant or as a casual worker in a private name household which has a gross annual payroll of less than $10,000 for such workers.
   B. Any person who is employed in agriculture or horticulture whose employer has a gross annual payroll of less than $100,000 for such workers.
   C. Agricultural employees who are not engaged in operation of motorized machines.
   D. Those who provide services in a medical care or social services program administered by the Department of Human Services.
   E. An employer with five or fewer employees, all of whom are related by blood or marriage to the employer.

III. ACCIDENTS
   A. Compensable Injury - 85 O.S. Supp 2001 §3
      1. An unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.
      2. “Compensable Injury” means any injury or occupational illness, causing internal or external harm to the body which arises out of and in the course of employment if such employment was the major cause of the specific injury or illness.
      3. Must be established by objective medical evidence.
4. “Compensable Injury” includes heart-related or vascular injury, illness or death only if an accident or the claimant’s employment is the major cause of the heart-related or vascular injury. Such injury shall be compensable only if it is demonstrated that the exertion necessary to produce the harm was extraordinary and unusual in comparison to other occupations and that the occupation was the major cause of the harm.

5. No mental claim without physical injury unless the trauma is rape.

6. Does not include the ordinary, gradual deterioration caused by the aging process.

7. Does not include injury while participating in recreational or social activities.

8. An injury resulting directly or indirectly from idiopathic causes is not compensable.

9. A heart-related or vascular injury is compensable if it is demonstrated that the exertion is necessary to produce the harm is extraordinary and unusual in comparison to the other occupations and that the occupation was the major cause of the harm.

10. “Major cause” is defined as the predominant cause of the resulting injury or illness.


1. “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. An occupational disease arises out of the employment only if the employment was the major cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section.

2. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section.

3. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment.

4. With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than 90 days and the evidence demonstrates that the exposure to the repetitive motion with the immediate prior employer was the prevailing
factor in causing the injury, the prior employer shall be liable for such occupational disease.

5. The employer liable for occupational diseases is “the employer in whose employment the employee was last exposed to the hazard of the occupational disease prior to evidence of disability.”
   a. For repetitive motion claims, if exposure is for less than three months and exposure with prior employer is prevailing factor in causing the injury, prior employer is liable.
   b. “Evidence of disability” is a new legislative term, and the courts have not ruled on its meaning.

IV. NOTICE - 85 O.S. Supp. 2001 §24.2 (A)
   A. 30 days to report traumatic accident to employer.
   B. 30 days starts from the date of accident or the date the claimant received medical attention.
   C. If no notice within 30 days, rebuttable presumption is that the injury is not work-related.
   D. In repetitive trauma/occupational diseases, the employee has 90 days from the employee’s separation from employment.
   E. The time within which an act is to be done under 85 O.S. shall not include the first day and legal holidays if they fall on the last day.

V. EMPLOYER’S FIRST NOTICE OF INJURY - 85 O.S. Supp. 2001 §24.1
   A. An employer’s First Notice of Injury should be filed for all claims that result in lost time beyond the shift or require medical aid away from the work site.
   B. Advise all employers to complete the employer’s First Notice of Injury as soon as possible and file with the Division of Workers’ Compensation in Oklahoma City, Oklahoma.
   C. Employer’s First Notice of Injury is to be filed within 10 days of or a reasonable time thereafter.
   D. File employer’s First Notice of Injury regardless of whether a claim is being denied. Filing is not an admission of compensability.
   E. Civil penalties possible for failure to file the employer’s First Notice of Injury.
   F. Form 2
VI. CLAIM FOR COMPENSATION – 85 O.S. Supp 2001 §43
A. Employee has two years from the date of accident or the last date payment was made for benefits to file a timely Claim for Compensation.
B. Special exceptions for asbestos, silicone or exposure to nuclear radiation.
C. Post-termination claims must be filed within six months of termination.
D. Form 3, 3A, 3B or 3E

VII. ANSWER TO CLAIM FOR COMPENSATION
A. If you receive a Claim for Compensation, assign the claim to counsel ASAP.
B. Answer must be filed on a Form 10 or 10M within 10 days of notice from Division of Workers’ Compensation.
C. Failure to file timely answer may result in waiver of affirmative defenses.
D. Continue investigation, attempt settlement if appropriate.

VIII. MEDICAL TREATMENT – 85 O.S. Supp 2001 §14
A. Employer provides and selects, unless it is emergency treatment.
B. Change of Doctor occurs by utilizing the dispute resolution process.
C. If employer fails or neglects to provide treatment with three days of actual notice of injury, employee may select the doctor at employer’s expense.
D. All medical reports must be submitted within seven days by the physician.
E. Rebuttable presumption in favor of the treating physician.
F. Court can appoint a medical case manager at employer’s expense.
G. Mileage owed if travel required outside the city or town of claimant’s residence with 600 miles round-trip limit with $8 per meal, per four hours.
H. Vocational Rehabilitation
   1. Never mandatory.
   2. Claimant is entitled to vocational rehabilitation if, due to the injury, they are unable to perform the same pre-injury job.
   3. Used to take a potential permanent total to another vocation.
   4. Only lasts 52 weeks.
   5. Under the new legislative changes, the claimant must now submit to “appropriate vocational testing” and a “vocational rehabilitation assessment” to obtain permanent total disability benefits.
6. Claimant receives temporary total disability benefits during participation in vocational rehabilitation.

IX. AVERAGE WEEKLY WAGE – 85 O.S. Supp 2001 §21
   A. Consists of his average annual earnings divided by 52.
   B. Multiply average daily wage by 260 and divide by 52.
   C. EXAMPLE:
      Full-Time Employee
      Employee makes $10 an hour/eight hours a day.
      Employee’s average annual earnings are $20,800 ($80 x 260)
      Average weekly wage is $440 ($20,800 ÷ 52)

X. DISABILITY BENEFITS
   A. Temporary Total Disability – 85 O.S. Supp 2001 §22 (2)
      1. 70 percent of employee’s average weekly wage not to exceed maximum (see rate card).
      2. Temporary total disability not to exceed 52 weeks without the judge’s approval.
      3. 150 or 300-week maximum with good cause.
      4. There are limits for temporary total disability on injuries such as hernias, soft tissue, non-surgical injuries.
      5. Employer has 10 days to pay compensation payments owed or a 10 percent penalty may be applied.
      6. Thirty dollars ($30) per week minimum.
      7. No temporary total disability benefits if a claimant is convicted of a misdemeanor or felony and sentenced to 90+ days in jail/prison.
      8. Waiting period – 85 O.S. Supp 2001 §13. Three days of business operation with benefits paid for those three days if claimant is off fourteen days.
   B. Temporary Partial Disability – 85 O.S. Supp 2001 §22 (4)
      1. 70 percent of the difference between the employee’s average weekly wage and the employee’s wage-earning capacity.
      2. Maximum of 150 weeks or 300 weeks with order from the Court after good cause is shown.
      3. No temporary total disability benefits to be paid when claimant is receiving unemployment benefits.
   C. Permanent Partial Disability – 85 O.S. Supp 2001 §3(19)
      1. "Permanent impairment" means any anatomical abnormality after maximum medical improvement has been achieved, which
abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made.

2. “Permanent partial disability” means permanent disability which is less than total and shall be equal to or the same as permanent impairment.


4. Employer gets a credit for pre-existing injuries.

5. Disfigurement.
   a. Applicable when there is serious and permanent disfigurement.
   b. Maximum is $20,000, prior to November 1, 2005, $50,000, after November 1, 2005.
   c. Must be decided by ALJ.
   d. Cannot be paid in addition to any other compensation.

6. If a claimant sustains severance or complete loss of use of a scheduled body part, the number of weeks of compensation allowed in the schedule for such disability shall be increased by 10 percent.

7. When dealing with minors, you must consider increased earning power for PPD (not TTD).

8. Calculation of Permanent Partial Disability
   a. Claimant has a rating of 10% permanent partial disability to the body as a whole.
   b. Claimant qualifies for the maximum compensation rate for his date of accident of $289.00.
   c. Value of rating would be $14,450.00. (500 wks X 10% X $289.00)

D. Permanent Total Disability – 85 O.S. Supp 2001 §3 (20)
   1. “Permanent Total Disability” means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee may become physically suited and reasonably fitted by education, training or experience, including vocational rehabilitation, loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability.
   2. 70 percent of the employee’s average weekly wage.
   3. Benefits are paid weekly during the continuance of such total disability.
   4. Cannot be paid in a lump sum.

E. Death – 85 O.S. Supp 2001§22 (8)
   1. Death resulting from accident/injury.
a. Surviving spouse receives 70 percent of the deceased claimant’s average weekly wage for life.
b. If spouse remarries, he/she receives only two additional years of benefits from remarriage date which is paid in one lump sum.
c. Surviving children receive benefits of 15 percent of the deceased claimant’s average weekly wage for each child. If more than two children, benefits are shared equally.
d. If there is no surviving spouse, 50 percent of the average weekly wage of the deceased claimant is paid to the child with 20 percent paid for each additional child to be shared equally among the children.
e. Children receive benefits until the age of 18, or 23 if they continue their education full-time at an accredited school.
f. Actually dependant parents receive 25 percent of deceased claimant’s average weekly wage.
g. Brothers, sisters and parents and grandchildren can also receive benefits if actually dependant.
h. After three years of dependency, there is a rebuttable presumption that actual dependent is no longer dependant.
i. The amount of benefits can change if the number of dependents change due to death, marriage, etc.
j. Total death benefits paid cannot exceed the average weekly wage of the deceased claimant’s average weekly wage at the time of death, whichever is less.
k. Lump sum payments for deaths after November 1, 2005 - $100,000 to surviving spouse and $5,000 to children (maximum of two) and $10,000 burial expense.

2. Death unrelated to accident.
   a. Any compensation accrued but unpaid at the time of death is paid to dependents.

XI. SUBROGATION – 85 O.S. Supp 2001 §44
   A. Claimant must elect to either seek compensation from workers’ compensation or against the third party.
   B. If claimant seeks benefits from third party, workers’ compensation is only responsible for the deficiency.
   C. If claimant elects workers’ compensation benefits, the third-party suit is assigned to the workers’ compensation carrier.
   D. The Court must approve any third-party settlement which is less than the workers’ compensation amount spent.
XII. PROCEDURE

A. Joint Petition Settlements
1. If claimant is not represented, employee and employer can reach a settlement agreement which must be approved by the administrator or judge.
2. Settlement is transcribed so a record is made.
3. Must have competent medical evidence.
4. If there is a change in condition after an award is entered, the claim can be re-opened upon application.

B. Judicial Settlement Conference
1. Set by the Division of Workers Compensation or at the request of either party.
2. Purpose is to see if the Claimant is in need of treatment or is ready to settle the claim.
3. Claims need to be assigned to counsel.
4. Need to have a rating report, if applicable.
5. Discussions are confidential and information cannot be used at trial.
6. Many cases settle at this time.
7. Informal settings used to facilitate settlement or outlining of issues.

C. Pre-Hearing
1. After Claim for Compensation has been filed, the Division of Workers’ Compensation will set Pre-Hearings within 45 days of the filing of the Form 13.
2. Generally requested by a party.
3. File a Form 13 to request the joinder of an additional party.
5. Alternatives at conclusion are:
   a. Mediation
   b. Continue and reset
   c. Settlement

D. Mediation
1. Set before a Mediator and can be requested by either party or the Court.
2. Both parties are typically required to have ratings and/or medical reports regarding treatment needs.
3. Defense counsel required to have costs of medical, temporary total disability, permanent partial disability and physical therapy.

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4. Formal discussion on all issues in case, potential for settlement and defenses.
5. Defense counsel must have access to client for settlement authority.
6. Alternatives at conclusion:
   a. Settlement
   b. Reset for Mediation
   c. Moved to Trial docket

E. Hearing/Trial – Form 9 or Form 15 (Temporary Total Disability)
   1. Must be requested by a claimant within three years of filing the Claim for compensation or last payment for treatment or claim is dismissed.
   2. At least 20 days before the trial date, all parties shall exchange medical reports, evidence, witness lists. This includes surveillance video.

F. Appellate Process
   1. Three Judge Panel.
      a. Ten days to appeal ALJ’s award.
      b. Review of the whole record.
      c. Application must give a specific statement of each error or they will be waived.

G. Liens and Offsets
   1. Spousal and Child Support Liens
      a. Lien must be filed with the Division of Workers’ Compensation.
      b. Temporary Total Disability: the maximum withheld is 25 percent of the weekly benefit.
      c. Permanent Partial Disability: the maximum withheld is 50 percent of the total settlement.
      d. Benefits generally paid to the Clerk of the Circuit Court.
   2. Attorney Liens
      a. Lien must be filed with the Division of Workers’ Compensation.
      b. Must be satisfied prior to payout of proceeds.

XIII. DEFENSES
   A. Arising out of and in the course of:
      1. There must be a causal connection between the conditions under which the work was required to be performed and the resulting injury. The injury results from a “natural and
reasonable incident” of the employment, or a risk reasonably “inherent in the particular conditions of the employment” AND the injury is the result of a risk “peculiar to the employment.”

a. Personal Assault—generally not compensable.
b. Horseplay—generally not compensable.
c. Personal Errands/Deviation—Generally not compensable.
d. Mental Injury. Must be a physical injury unless the trauma is rape.
e. Injury due to the ordinary, gradual deterioration caused by the aging process.

B. “In the course of”

1. Must be proven that the injury occurred within the period of employment at a place where the employee may reasonably be, while engaged in the furtherance of the employer’s business, or in some activity incidental to it.

a. Coming and going: Broad exceptions to this rule.
b. Parking Lot: If the employer exercises ownership, control of the parking lot, or has some form of right to use the lot, an accident occurring on the lot will generally be found compensable.

C. Other Defenses

1. Recreational or Social Activity Injuries. Not compensable.

2. Statute of Limitations. (85 O.S. Supp 2001 §3). Two years from the date of accident or last day benefits were paid. A post-termination claim must be filed within six month of termination.

3. Notice of Accident to Employer. (85 O.S. Supp 2001 §24.2(A). Claimant must give written notice of the time, place, and nature of the injury as soon as practicable after the happening thereof, but not later than 30 days after the accident. If notice is given after the 30 day period, there is a rebuttable presumption that the injury is not work-related.

4. Some domestic servants and agriculture workers.


a. Any injury which occurs when an employee is using substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, or is using or abusing alcohol or illegal drugs, or is illegally using chemicals; provided, this paragraph shall only apply when the employee is unable to prove by a preponderance of the evidence that the substances, alcohol, illegal drugs, or illegally used chemicals were not the proximate cause of the injury or accident. For the
purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence.

6. Medical Causation

7. Employer/Employee Relationship
   a. Owner and Operator of Truck.
   b. General Contractor-Subcontractor Liability.
   c. Independent Contractor.


10. Idiopathic (Unexplained or Unique to the Individual) Fall

11. Accidental Injury:
   a. 85 O.S. Supp 2001 §3.
      i. Unexpected traumatic event or unusual strain.
      ii. Identifiable by time and place of occurrence.
      iii. Caused by a specific event during a single shift.
      iv. Must be established by objective medical evidence.
      v. Work must be the major cause which is defined as the predominant cause of the resulting injury or illness.

12. Failure to Use Provided Safety Devices: 85 O.S. Supp 2001 § 11 (a)(2) the injury is caused by the willful failure of the employee to use a guard of protection against accident furnished for use pursuant to any statute or by order of the Commission of Labor.