



Oklahoma
State
Senate

Legislative Brief

June 2005

Workers' Compensation Reform – SB 1X (Morgan/Hiett)

Issue Background

Workers' compensation reform is frequently a topic of discussion at the Legislature and this past session was no exception. In May 2004, Governor Brad Henry convened a task force to study Oklahoma's workers' compensation system and directed the task force to recommend changes to the system which would increase benefits to workers while reducing costs for employers. The bipartisan task force, composed of legislators, business owners, attorneys, medical care providers, and others interested in workers' compensation, met through the summer and fall of 2004 and submitted its recommendations in January 2005. The task force's recommendations were included in SB 846, which was introduced during the regular 2005 legislative session.

Summary of Actions

SB 846 was authored by Sen. Charles Laster, Rep. Chris Hastings and Rep. Jari Askins, and contained the recommendations of the Governor's Task Force on Workers' Compensation Reform. SB 846 passed the Senate on 3/16/2005 and passed the House with substantial amendments on 4/28/2005. The bill then went to conference committee to work out the differences between the 2 versions. Negotiations continued through the end of session, with an agreement reached during the last week of session. Due to the extremely complex nature of the legislation, it was decided to give legislators additional time to review the bill prior to voting on the measure, and the Governor called for special session. The language of SB 846 was placed in SB 1X, which passed the Senate on June 1, 2005, and the House on June 3, 2005, and was signed by the Governor on June 6, 2005. The bill is estimated to save Oklahoma businesses \$120 million and has been heralded as major workers' compensation reform.

Legislative Measures:

SECTION 1: FRAUD AMENDATORY

- Increases penalties for fraud and requires convicted parties to pay restitution.

SECTIONS 2-3: FILE AND USE**SECTION 2- NEW LAW****SECTION 3-AMENDATORY**

- Allows insurance companies to use rates before filing them with the Insurance Department.
- Subjects workers' compensation insurance carriers to the provisions of the Property and Casualty Competitive Loss Cost Rating Act.

SECTION 4: DRUG TESTING**AMENDATORY**

- Allows an employer to drug test any employee following an incident which injures an employee or causes damage to equipment worth \$500 or more, without requiring reasonable suspicion of drug use or that the property damage was the direct result of the use of alcohol or drugs.

SECTION 5: RETURN TO WORK**NEW LAW****AMENDATORY**

- Provides tax credit of eligible expenses to modify a workplace for an injured worker on light duty, up to \$1000, not to exceed \$10,000/year/taxpayer and 10% of wages of an injured worker on light duty for 3 months, up to \$5,000, not to exceed \$25,000/year/taxpayer.

SECTION 6: SAFETY**AMENDATORY**

- Gives a \$1,000/year income tax exemption to an employer that uses the Safety Pays Consultation Service provided by Oklahoma Department of Labor.

SECTION 7: STATUTORY CONSTRUCTION**AMENDATORY**

- Requires the Workers' Compensation Act to be strictly construed by the courts.

SECTION 8: ADMINISTRATION OF THE COURT**AMENDATORY**

- Allows the Governor to appoint the Administrator. Sets the terms of appointment at 6 years.
- Allows the Administrator to be removed for cause.

SECTION 9: DEFINITIONS**AMENDATORY**

- Defines "amount in dispute", "major cause" and "objective medical evidence."

- Modifies definition of “injury”.
- Before permanent partial disability (PPD) can be awarded, requires an employee to show objective evidence of a permanent anatomical abnormality.

**SECTION 10: VENUE
AMENDATORY**

- Allows the parties to agree to venue. If the parties do not agree, the Court can select venue.
- Authorizes the Workers’ Compensation Court to hold hearings by videoconference if the parties agree.

**SECTION 11: COUNSELOR PROGRAM
AMENDATORY**

- Requires the Administrator to mail notice to claimants upon the filing of Form 3s advising of the counselor program and mediation.

**SECTION 12: MEDIATION
AMENDATORY**

- Allows the Workers’ Compensation Court to order mediation if either party requests it or allows the Court to order mediation if the Court believes mediation would be helpful.
- Changes procedure for certifying mediators.

**SECTION 13: WRONGFUL TERMINATION
AMENDATORY**

- Prohibits an employer from terminating an employee to avoid payment of temporary total disability (TTD).

**SECTION 14: EXCLUSIVE REMEDY
AMENDATORY**

- Clarifies that the exclusive remedy provision of the Workers’ Compensation Act does not abrogate rights provided by the constitution.

**SECTION 15: MEDICAL TREATMENT
AMENDATORY**

- Terminates compensation for a partially disabled employee who refuses employment suitable to the capacity of the employee, but entitles the employee to notice and hearing before such termination.
- Allows an employer enrolled in a Certified Workplace Medical Plan (CWMP) to select a physician for an employee from doctors within the plan.
- Modifies how the medical fee schedule is determined.

- Requires Administrator to reduce the medical fee schedule to save 4% on medical costs, with no single procedure to pay less than 115% of Medicare.
- Mandates that invoices for implantables must be reduced to reflect all rebates and discounts.
- Limits prescription costs to 90% of average wholesale price plus \$5 dispensing fee. Directs the use of generics when available.
- Allows an employee to have one change of physician by presenting a list of 3 doctors to employer. Employer can choose one of the 3 doctors submitted by the employee or submit its own list of 3 doctors. If the parties are unable to agree, the Court selects a physician from the IME list.
- Prohibits repeating diagnostic tests sooner than every 6 months, unless agreed to or ordered by the Court.

SECTIONS 16-17: CWMPs AMENDATORY

- Eliminates enrollment process for CWMPs.
- Requires annual on-site inspections of CWMPs by the Health Department.

SECTION 18: VOCATIONAL REHABILITATION AMENDATORY

- Requires an employee to pay for a vocational rehabilitation evaluation prior to any award for permanent total disability (PTD).
- Limits TTD during retraining to 52 weeks with 52 weeks extension possible.

SECTION 19: MEDICAL PROOF AMENDATORY

- Creates rebuttable presumption in favor of the opinion of the treating physician.
- If either party objects to the opinion of the treating physician, the parties shall agree on the appointment of an independent medical examiner (IME) or the Court appoints IME.
- IME advises if the opinion of the treating doctor is supported by objective medical evidence. If it is, review ends. If it is not, the IME may render an opinion. Court may follow the opinion of treating physician or IME or establish its own opinion.
- Prohibits an IME of a claimant from also being the treating physician of the same claimant.
- Allows the Court to remove an IME for cause.
- Allows an employer to stop TTD payments if the employee is released from treatment by the treating physician and provides a procedure for objecting to such termination of TTD.

SECTION 20: BENEFITS AMENDATORY

- Limits total payments for TTD and temporary partial disability (TPD) to 300 weeks.
- Increases disfigurement benefits.
- Limits TTD for hernia to 6 weeks, with 6 week extension possible with surgery.

- Limits TTD for non-surgical soft-tissue injury to 8 weeks, with a 16 week extension possible with surgery.
- Defines soft-tissue injury.
- Requires permanent anatomical abnormality before permanent partial disability (PPD) may be awarded. In determining if permanent anatomical abnormality exists, Court may consider wage-earning ability of employee.
- Increases death and funeral benefits.
- Expands previous conditions for which an employer is not responsible to compensate an employee.

SECTION 21: FORM 2S AMENDATORY

- Makes Form 2s (Employer's First Notice of Injury) confidential.

SECTION 22: SETTLEMENT AMENDATORY

- Allows settlement of a case between an employer and unrepresented employee without filing a Form 3, with approval by the Administrator or the Court.
- Prohibits the Court and others from considering such settlements as PPD awards for statistical purposes.

SECTION 23: ATTORNEY FEES AMENDATORY

- If an employer has admitted compensability and makes an offer of settlement within a certain time frame, the claimant's attorney fee shall be limited to 35% of the amount in dispute, not to exceed 20% of the PPD award.

SECTION 24: STATUTES OF LIMITATIONS AMENDATORY

- Requires post-termination injury claims be filed within 6 months of termination.
- Shortens time within which an injured worker may reopen a claim for a change of condition for the worse from 5 years to 3 years.

SECTION 25: SUBROGATION AMENDATORY

- Authorizes subrogation in death claims against third parties but not against death benefits or life insurance proceeds from policy procured by the employee.

**SECTION 26: DEATH BENEFITS
AMENDATORY**

- Increases death benefits for surviving spouse if employee dies from causes other than the on-the-job injury from \$50/week to 50% of PTD benefits to which the deceased was entitled.
- Terminates surviving spouse benefits upon remarriage.

**SECTION 27-30: MULTIPLE INJURY TRUST FUND CLAIMS
AMENDATORY**

- Modifies the definition of “physically impaired person” so that a person must have a previous adjudication of disability in order to combine the disability with other injuries for purposes of presenting a claim against the Multiple Injury Trust Fund (MITF).
- Reinstates PTD claims resulting from a combination of injuries against the MITF. Such awards can only be paid in periodic installments.
- Increases funding for safety programs at the Department of Labor and Career Tech and for the Attorney General’s workers’ compensation fraud unit.
- Allows CompSource Oklahoma to appear in any case in which the Court is considering an award from the MITF.

**SECTION 31: PHYSICIAN ADVISORY COMMITTEE
AMENDATORY**

- Adds an occupational medicine physician to the Physician Advisory Committee.
- Allows the appointing authorities to change all appointments on the Committee effective July 1, 2005, with newly appointed members serving out the terms of replaced members.
- Directs Committee to develop treatment guidelines for all injuries and makes compliance with guidelines mandatory without prior authorization. Provides procedure for preauthorization review by an IME. Sets forth guidelines for payment of IME for preauthorization review.
- Directs Committee to develop guidelines for prescription of Schedule II drugs.

**SECTION 32: TASK FORCE
NEW LAW**

- Creates Task Force for the Study of the Competitiveness of the Workers’ Compensation Insurance Market and the Solvency of the Workers’ Compensation Insurance Account of the Oklahoma Property and Casualty Insurance Guaranty Association.

**SECTION 33: USE AND FILE
REPEALER**

- Repeals 36 O.S. 2001, Section 902.1, which required workers’ compensation insurance rates to be filed and approved before use by insurance companies.

**SECTION 34: CERTIFICATES OF NON-COVERAGE
REPEALER**

- Repeals 40 O.S. 2001, Sections 415.1 and 415.2, which allowed the Department of Labor to issue certificates of non-coverage.

SECTION 35: EFFECTIVE DATE

- July 1, 2005 – Sections 1-4 and 7-34.

SECTION 36: EFFECTIVE DATE

- July 1, 2006 – Sections 5-6..

SECTION 37: SEVERABILITY CLAUSE

- Provides that if any part of the bill is declared unconstitutional, the remaining parts of the bill can still take effect.

SECTION 38: EMERGENCY CLAUSE**Contact For More Information:**

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