STATE OF OKLAHOMA
WORKERS’ COMPENSATION
COMPENDIUM OF LAW

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PART ONE:
The Oklahoma Legislature enacted the current Employees’ Compensation Code (Code), effective August 26, 2011 – Okla. Stat. tit. 85, §§ 301-413. In Oklahoma, the statutory provisions of the Code provide the exclusive means by which an employee can obtain benefits including medical treatment and indemnity benefits if injured on-the-job. Ingron v. Oneok, Inc, 1989 OK 82, 775 P.2d 810, 813. The statutes are in derogation of the common-law, and provide the exclusive provisions governing these types of benefits. Patterson v. Sue Estell Trucking, Inc., 2004 OK 66, 95 P.3d 1087, 1088. The Employees’ Compensation Court Rules are also located in Title 85. Court rules are valid expressions of lawmaking powers which have the force and effect of law. Estes v. ConocoPhillips Co., 2008 OK 21, 184 P.3d 518; Renfrow v. Ittleson, 1925 OK 403, 236 P. 585.

In 2013, the Oklahoma Legislature repealed the Code and enacted the Administrative Employees’ Compensation Act [Administrative Act]. The new administrative statutes theoretically go into effect on February 1, 2014 -- Okla. Stat. tit. 85A, §§ 1-400. References to the substantive provisions will include references to both the current Code and the impending Administrative Act.

COMPENSABILITY

1. Jurisdiction
   For an injury occurring on-the-job in Oklahoma to be deemed compensable jurisdiction must be present. The Oklahoma Employees’ Compensation Court may assume jurisdiction over an alleged work-related injury when an employee is either injured while working in Oklahoma, or if injured outside of the State of Oklahoma, the employment contract was made in the State of Oklahoma. Okla. Stat. tit. 85, § 310.

   There must be an employer-employee relationship. An “employer” is statutorily defined as “a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, 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 defined in this section. Employer may also mean the employer’s employees' compensation insurance carrier, if applicable.” Okla. Stat. tit. 85, § 308(18); Okla. Stat. tit. 85A, § 2(19).

2. Definition of Employer and Employee
   An “employee” is defined as “any person engaged in the employment of an employer covered by the terms of the Employees' Compensation Code except for such persons as may be excluded elsewhere in this act. Provided, any person excluded as an employee may, if otherwise qualified, be eligible for benefits under the Employees' Compensation Code if specifically covered by any policy of insurance covering benefits under the Employees' Compensation Code. "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 employee, rendering services as a firefighter, peace officer or emergency management employee. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor.” Okla. Stat. tit.
85, § 308(17); Okla. Stat. tit. 85A, § 2(18)(a)- specific exclusionary provisions consider eleven (11) types of employees as non-employees under both the Code and the Administrative Act.

3. **Non-Jurisdictional Requirements**

If the employer-employee relationship exists, then a work-related injury must arise out of the employment to be compensable. The term “arise out of employment” contemplates the causal connection between the injury and the risks incident to employment. *American Management Systems, Inc. v. Burns*, 1995 OK 58, 903 P.2d 288, 290, n.4. An injury does not arise out of the employment unless it results from a risk reasonably incident to the employment, and unless there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Novak v. McAlister*, 1956 OK 205, 301 P.2d 234, 236.

Additionally, a work-related injury must also occur in the course of employment. The term “in the course of employment” relates to the time, place or circumstances under which the injury is sustained. *American Management Systems, Inc. v. Burns*, 1995 OK 58, 903 P.2d 288, 290, n.3. This element is fulfilled when the accident occurs within the period of employment, at a place where the employee may reasonably be, and while he or she is reasonably fulfilling the duties of the employment or engaged in doing something incidental to it. *R.J. Allison, Inc. v. Boling*, 1943 OK 43, 134 P.2d 980, 982. The new Administrative Act defines “course and scope of employment” as “an activity of any kind or character for which the employee was hired and that relates to and derives from the work, business, trade or profession of an employer, and is performed by an employee in the furtherance of the affairs or business of an employer. The term includes activities conducted on the premises of an employer or at other locations designated by an employer and travel by an employee in furtherance of the affairs of an employer that is specifically directed by the employer.” Okla. Stat. tit. 85A, § 2(13) with exceptions enumerated.

Since 2005, in addition to the arising out of and in the course of elements, an employee must also prove by a preponderance of the evidence that the employment is the “major cause” of the injury sustained. Major cause means more than fifty percent (50%) of the resulting injury, disease or illness. Okla. Stat. tit. 85, § 308(28); Okla. Stat. tit. 85A, § 2(27). Major cause is a viable defense when an employee has a pre-existing condition involving alleged injury to the same parts of the body. Major cause can serve as a liability-defeating defense especially when pre-existing medical evidence (e.g. MRI) demonstrates that there has been no objective changes in condition when compared to post-accident medical evidence (e.g. MRI).

4. **Injuries Excluded from Compensability**

The Oklahoma Legislature has historically delineated certain types of injuries which are not compensable as a matter of law. For instance, injuries caused by willful and intentional conduct by the employee, horseplay, prank, and willful failure to wear safety devices required by law, are excluded from compensability. On or after August 26, 2011, for example, an employee may sustain an accident at work and suffer an otherwise compensable injury. However, if this employee tests positive for alcohol or illegal substances, or refuses to submit to testing post-accident, the burden shifts to the injured work to prove by a preponderance of the evidence that the drugs or alcohol are not the major cause of the injury. Okla. Stat. tit. 85, § 312(3). The Oklahoma Supreme Court interpreted this provision as creating a rebuttable presumption that the employees’ injury is not work related. Therefore, the employee would be

Since 2010, the Oklahoma Legislature has also excluded injuries which transpire on premises not owned or controlled by the employer, or areas where essential job functions are not performed. Okla. Stat. tit. 85, § 312(6). Oklahoma appellate courts have interpreted the provision as creating an either/or requirement. To further explain, even if the injury occurs on the employer’s premises, if it is not an area where essential job functions are performed, it is not compensable. See *Leandro v. American Staffcorp, Inc.*, 2013 OK CIV APP 68. The Oklahoma Legislature then clarified the statute under the Administrative Act; Okla. Stat. tit. 85A, § 2(13), which specifically excludes from liability the parking lot and other common areas before the employee clocks in for work and after the employee clocks out from work.

**AGGRAVATION OF PRE-EXISTING CONDITIONS**

In Oklahoma, employees’ compensation benefits are not limited to perfectly healthy employees. *Firemen’s Fund Insurance Co. v. Standridge*, 1970 OK 40, 467 P.2d 461 (1970). The axiom is true although evidence may indicate an employee may be disabled by disease in the future even though accidental injury had not occurred. Oklahoma has followed this principle since the Oklahoma Supreme Court’s decision in *Christian v. Hanna*, 1930 OK 325, 289 P. 708 (1930). Further, an employer takes an employee as it finds him or her, and even where one is prone to a particular injury it is compensable if it is not idiopathic. *Pauls Valley Travel Center v. Boucher*, 2005 OK 30 ¶ 14,112 P.3d 1175, 1182. Oklahoma law does not undertake to apportion the degree or extent by which an employee’s illness is augmented or hastened by the injury superimposed upon it. Rather, where it is shown that a latent or dormant disease, unknown to the employee is aggravated, accelerated or brought to life by an accidental injury, the entire disability arising from the cumulative effect of injury and illness, interacting upon each other and operating together, furnishes the proper basis for compensation. *Marlar v. Marlar*, 1960 OK 110, 353 P.2d 17, 19.

However, insofar as the compensability finding is concerned, the “major cause” requirement has been the law since July 1, 2005. If it can be shown that the pre-existing condition is the major cause, then aggravation of a pre-existing condition can still be defeated. Furthermore, under the new Administrative Act, in addition to the major cause requirement, no preexisting condition is deemed compensable unless the treating physician clearly confirms an identifiable and significant aggravation occurred in the course and scope of employment. Okla. Stat. tit. 85A, § 2(9)(b)(6).

**LAST EXPOSURE RULE**

In 2001, the Oklahoma Legislature enacted Okla. Stat. tit. 85, § 11(B)(5), which was repealed effective August 26, 2011, and replaced with the current Okla. Stat. tit. 85, § 317. The substance of both provisions is the same. The new section states, “[w]here benefits are payable for an injury resulting from cumulative trauma, the last employer in whose employment the employee was last injuriously exposed to the trauma for a period of at least ninety (90) days of such injurious exposure, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. If there is no employer in whose employment the employee was injuriously exposed to the trauma for a
period of at least ninety (90) days, then the last employer in whose employment the employee was last injuriously exposed to the trauma and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefore, with right to contribution from any prior employer or insurance carrier.” The provision allows for full liability to be placed on the employer and insurance carrier with whom the employee last incurred injurious exposure for at least ninety (90) days. The provision should have no effect under the Administrative Act, as cumulative trauma injuries are not compensable unless, among other things, the employee has completed at least 180 days of continuous, active employment. Okla. Stat. tit. 85A, § 2(14).

**TYPES OF ACCIDENTAL INJURIES**

1. **Accident** (Okla. Stat. tit. 85A, § 2[9][a]): An event involving factors external to the employee that:
   (1) was unintended, unanticipated, unforeseen, unplanned and unexpected,
   (2) occurred at a specifically identifiable time and place,
   (3) occurred by chance or from unknown causes, and
   (4) was independent of sickness, mental incapacity, bodily infirmity or any other cause.

2. **Single-Event**: An accidental injury caused by a specific incident and is identifiable by time, place, and occurrence. Okla. Stat. tit. 85, § 308(10)(a);

3. **Cumulative Trauma (current)**: An accidental injury which is repetitive in nature and engaged in over a period of time, the major cause of which results from employment activities, and proved by objective medical evidence. Okla. Stat. tit. 85, § 308(15).

4. **Cumulative Trauma (Administrative Act)**: An accidental injury to an employee that is caused by the combined effect of repetitive physical activities extending over a period of time in the course and scope of employment. Cumulative trauma shall not mean fatigue, soreness or general aches and pain that may have been caused, aggravated, exacerbated or accelerated by the employee's course and scope of employment. Cumulative trauma shall have resulted directly and independently of all other causes and the employee shall have completed at least one hundred eighty (180) days of continuous active employment with the employer. Okla. Stat. tit. 85A, § 2(14).

5. **Occupational Disease (current)**: 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. Okla. Stat. tit. 85, § 308(33).

6. **Occupational Disease (Administrative Act)**: Any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in the Administrative Act. A causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence. Okla. Stat. tit. 85A, § 65(D)(1).