

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2398

By: Hays of the House and Rosino of the Senate

Title: Workers' compensation; first responders; injuries related to mental health; disability benefits;
effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES

Rosino _____
Daniels _____
Treat _____
McCortney _____
Weaver _____
Brooks _____

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 2398

By: Hays and West (Josh) of the
House

7 and

8 Rosino of the Senate

9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to workers' compensation; amending
12 85A O.S. 2021, Section 13, which relates to certain
13 injuries related to mental health; providing for
14 computation of benefits for certain persons;
15 providing for temporary pension benefits; imposing
16 limit on total period for disability benefits;
17 providing for award of permanent total disability
18 based upon maximum medical improvement; providing for
19 payment of benefits based on certain injury; imposing
20 time limit on benefits; imposing limit on employer
21 responsibility for prescription medicine; defining
22 terms; providing for transfer of payment for claims
23 or increased premiums incurred by cities or towns;
24 prescribing procedures; providing for terminology in
official publications; amending 85A O.S. 2021,
Section 400, which relates to the Court of Existing
Claims; providing for certain terms of office;
providing an effective date; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 85A O.S. 2021, Section 13, is
2 amended to read as follows:

3 Section 13. A. 1. A mental injury or illness is not a
4 compensable injury unless caused by a physical injury to the
5 employee, and shall not be considered an injury arising out of and
6 in the course and scope of employment or compensable unless
7 demonstrated by a preponderance of the evidence; provided, however,
8 that this physical injury limitation shall not apply to any victim
9 of a crime of violence or to a law enforcement officer, firefighter,
10 or emergency medical technician on a full-time basis by a
11 municipality, county, or the State of Oklahoma, or a volunteer
12 firefighter who suffers post-traumatic stress disorder, as defined
13 herein, while responding to an emergency. For the purpose of this
14 section, such employee shall be referred to as a first responder.

15 2. No mental injury or illness under this section shall be
16 compensable unless it is also diagnosed by a licensed psychiatrist
17 or psychologist and unless the diagnosis of the condition meets the
18 criteria established in the most current issue of the Diagnostic and
19 Statistical Manual of Mental Disorders.

20 B. 1. Notwithstanding any other provision of this act, where a
21 claim is for mental injury or illness, the employee shall be limited
22 to twenty-six (26) weeks of disability benefits unless it is shown
23 by clear and convincing evidence that benefits should continue for a
24 set period of time, not to exceed a total of fifty-two (52) weeks.

1 If the treating physician is of the opinion that the first responder
2 is temporarily unable to perform his or her job or any alternative
3 work offered by the employer, he or she shall be entitled to receive
4 compensation which is the greater of the weekly benefit provided for
5 in a collective bargaining agreement or according to the policy of
6 the employer, or seventy percent (70%) of the injured employee's
7 average weekly wage not to exceed the state average weekly wage. If
8 the employee has a temporary pension benefit available at no
9 additional cost to the employee and the benefit is equal to or
10 greater than the temporary award in this system the employer may
11 elect to exercise the temporary pension benefit. In no event shall
12 disability benefits extend beyond fifty-two (52) weeks.

13 2. Notwithstanding any other provision of this section, a
14 person who receives benefits provided herein for a mental injury or
15 illness not caused by a physical injury who, after reaching maximum
16 medical improvement, is unable to perform the essential functions of
17 their employment position and who is not eligible to receive a
18 disability retirement through their pension or retirement system
19 shall be eligible to be awarded permanent disability benefits not to
20 exceed Fifty Thousand Dollars (\$50,000.00) as provided for in this
21 act.

22 3. a. In cases where death results directly from the mental
23 injury or illness within a period of one (1) year,
24

1 compensation shall be paid the dependents as provided
2 in other death cases under this act.

3 b. Death directly or indirectly related to the mental
4 injury or illness occurring one (1) year or more from
5 the incident resulting in the mental injury or illness
6 shall not be a compensable injury.

7 C. 1. In the event the Workers' Compensation Commission finds
8 that a first responder has suffered post-traumatic stress disorder
9 not accompanied by a physical injury, as defined herein, the
10 employer shall provide reasonable and necessary medical treatment
11 for such injury, subject to the Oklahoma Workers' Compensation Fee
12 Schedule, for a period of no longer than one (1) year. The employer
13 shall not be responsible for medical treatment in the form of
14 prescription medicine in excess of Ten Thousand Dollars
15 (\$10,000.00).

16 2. During any period in which a first responder is temporarily
17 unable to perform his or her job, the employer shall pay to maintain
18 health insurance coverage for the first responder, if such health
19 insurance was in effect on the date of the injury.

20 D. "Post-traumatic stress disorder", for the purpose of this
21 section, means an injury or condition in which a first responder has
22 been exposed to a traumatic event and:

23 1. Has experienced, witnessed, or was confronted with an event
24 that involved actual or threatened death or serious injury, or a

1 threat to the physical integrity of others, and the response
2 involved fear, helplessness, or horror;

3 2. The traumatic event is persistently re-experienced in one or
4 more of the following ways:

5 a. recurrent and intrusive distressing recollections of
6 the event,

7 b. recurrent distressing dreams,

8 c. acting or feeling as if the traumatic event were
9 recurring,

10 d. intense psychological distress at exposure to cues
11 that symbolize an aspect of the traumatic event, or

12 e. physiological reactivity on exposure to cues that
13 symbolize an aspect of the traumatic event;

14 3. Persistent avoidance of stimuli associated with the trauma
15 and numbing of general responsiveness such as efforts to avoid
16 thoughts, feelings or conversations associated with the trauma,
17 markedly diminished interest or participation in significant
18 activities, or a feeling of detachment or estrangement from others;

19 4. Persistent symptoms of increased arousal such as difficulty
20 falling or staying asleep, irritability or outbursts of anger,
21 difficulty concentrating, or hypervigilance;

22 5. The duration of the disturbance is more than one (1) month;
23 and

24

1 6. The disturbance causes clinically significant distress or
2 impairment in social, occupational and other important areas of
3 functioning.

4 E. "Volunteer firefighter", for the purpose of this section,
5 means a person who is enrolled as a member of a volunteer fire
6 department with two or less salaried firefighters and who serves in
7 such capacity without receiving a regular salary.

8 F. "Emergency medical technician", for the purpose of this
9 section, means a person who holds a license as an emergency medical
10 technician, an intermediate or advanced emergency medical
11 technician, or a paramedic, such license issued by the State
12 Department of Health to perform emergency medical services in
13 accordance with the Oklahoma Emergency Response Systems Development
14 Act and the rules and standards promulgated by the State
15 Commissioner of Health.

16 G. Any city or town in this state that incurs a claim relating
17 to post-traumatic stress disorder may, at the city or town's option,
18 transfer the payment of all or any portion of the claim or increased
19 workers' compensation premiums to the judgment rolls of the
20 geographic area or areas serviced by the department of the injured
21 worker and shall be listed on official publications as "First
22 Responder PTSD".

23 SECTION 2. AMENDATORY 85A O.S. 2021, Section 400, is
24 amended to read as follows:

1 Section 400. A. The Workers' Compensation Court shall be
2 renamed the Workers' Compensation Court of Existing Claims for the
3 purpose of hearing disputes relating to claims that arise before
4 February 1, 2014. ~~The Court shall consist of the existing judges~~
5 ~~for the remainder of his or her term. Each judge of the Court shall~~
6 ~~continue to serve as the appointment to a designated position on the~~
7 ~~Court. The terms of the judges by position number shall expire on~~
8 ~~the following dates:~~

9 ~~Position 4 shall expire 7-1-20.~~

10 ~~Position 5 shall expire 7-1-20.~~

11 ~~Position 8 shall expire 7-1-20.~~

12 ~~Position 9 shall expire 7-1-20.~~

13 B. ~~Effective July 1, 2020, the~~ The Workers' Compensation Court
14 of Existing Claims shall consist of one judge to be appointed by the
15 Governor, with confirmation by the Senate. The judge shall be
16 appointed for a term to expire on July 1, ~~2022~~ 2023. For the
17 purpose of continued operation of the Court of Existing Claims until
18 July 1, 2025, the existing judge on the effective date of this act
19 shall continue to serve, with the term to expire on July 1, 2025.

20 The Governor shall select the judge from a list of three applicants
21 submitted to the Governor by the Judicial Nominating Commission. If
22 the list is not acceptable to the Governor, the Governor may request
23 from the Judicial Nominating Commission a list of names of three
24 additional applicants. Any present judge of the Court of Existing

1 Claims may apply to the Judicial Nominating Commission for
2 appointment to fill any position authorized by this section.

3 C. A judge may be removed for cause by the Court on the
4 Judiciary prior to the expiration of his or her term.

5 D. Each judge shall receive a salary equal to that paid to a
6 district judge of this state, and shall devote full time to his or
7 her duties and shall not engage in the private practice of law
8 during the term in office.

9 E. If a vacancy occurs on the Court of Existing Claims, the
10 Governor shall appoint a judge to serve the remainder of the term
11 from a list of three applicants submitted to the Governor by the
12 Judicial Nominating Commission, with confirmation of the State
13 Senate. If the list is not acceptable to the Governor, the Governor
14 may request from the Judicial Nominating Commission a list of the
15 names of three additional applicants.

16 F. 1. ~~Effective January 1, 2020, the~~ The Governor shall
17 appoint an Administrator of the Court of Existing Claims, who shall
18 serve at the pleasure of the Governor. The Administrator shall be
19 appointed by the Governor with the advice and consent of the Senate.
20 The compensation for the Administrator shall be set at ninety
21 percent (90%) of the compensation of a district court judge.

22 2. The Administrator shall employ and supervise the work of
23 employees of the Court and shall have the authority to expend funds
24 and contract on behalf of the Court. The Administrator may contract

1 with the Workers' Compensation Commission to provide support
2 services or personnel needs necessary to carry out the purposes of
3 the Court and shall supervise the work of any such personnel as
4 necessary to maintain the Court as a Court of Record.

5 G. The Court of Existing Claims shall contract with the
6 Workers' Compensation Commission to integrate its case management
7 and records Information Technology System into the system of the
8 Workers' Compensation Commission with such integration to be
9 completed on or before July 1, 2022. The Court shall be entitled to
10 any fees generated for the retrieval of such data.

11 H. The Court shall operate by the rules adopted by the Workers'
12 Compensation Court prior to February 1, 2014.

13 I. The Court is hereby designated and confirmed as a court of
14 record, with respect to any matter within the limits of its
15 jurisdiction, and within such limits the judges thereof shall
16 possess the powers and prerogatives of the judges of the other
17 courts of record of this state including the power to punish for
18 contempt those persons who disobey a subpoena, or refuse to be sworn
19 or to answer as a witness, when lawfully ordered to do so.

20 J. The principal office of the Court shall be situated in the
21 City of Oklahoma City in quarters assigned by the Office of
22 Management and Enterprise Services. The Court may hold hearings in
23 any city of this state.

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1 K. All county commissioners and presiding district judges of
2 this state shall make quarters available for the conducting of
3 hearings by a judge of the Court upon request by the Court.

4 L. Judges of the Workers' Compensation Court of Existing Claims
5 may punish for direct contempt pursuant to Sections 565, 565.1 and
6 566 of Title 21 of the Oklahoma Statutes.

7 M. The Court shall be vested with jurisdiction over all claims
8 filed pursuant to the Workers' Compensation Code or previous statute
9 in effect on the date of an injury that occurred before February 1,
10 2014. All claims so filed shall be heard by the judge sitting
11 without a jury. The Court shall have full power and authority to
12 determine all questions in relation to payment of claims for
13 compensation under the provisions of the Workers' Compensation Code
14 or previous statute in effect on the date of an injury that occurred
15 before February 1, 2014. The Court, upon application of either
16 party, shall order a hearing. Upon a hearing, either party may
17 present evidence and be represented by counsel. The decision of the
18 Court shall be final as to all questions of fact and law; provided,
19 the decision of the Court may be appealed to the Court en banc or
20 the Supreme Court as provided by the Workers' Compensation Code or
21 previous statute in effect on the date of an injury that occurred
22 before February 1, 2014. In the event that an insufficient number
23 of active judges are available to comprise the three-judge en banc
24 panel, retired or former judges of the district court, Workers'

1 Compensation Court or Workers' Compensation Court of Existing Claims
2 may be designated by the Presiding Judge of the Court of Existing
3 Claims as eligible to serve on such panel. The Governor shall
4 provide to the Court of Existing Claims a list of designated judges
5 eligible for service on the Court en banc. The decision of the
6 Court shall be issued within thirty (30) days following the
7 submission of the case by the parties. The power and jurisdiction
8 of the Court over each case shall be continuing and it may, from
9 time to time, make such modifications or changes with respect to
10 former findings or orders relating thereto if, in its opinion, it
11 may be justified.

12 N. For an injury occurring before February 1, 2014, all
13 benefits and procedures to obtain benefits shall be determined by
14 the workers' compensation law of this state in effect on the date of
15 the injury.

16 O. All accrued rights and penalties incurred pursuant to a
17 final order of the Workers' Compensation Court shall be preserved.
18 No accrued right, penalty incurred, or proceeding begun by virtue of
19 a statute repealed by this act shall be abrogated by the terms of
20 this act.

21 P. Annually, on or before the first day of July, ~~commencing~~
22 ~~with July 2019,~~ the Administrator shall prepare and submit a report
23 for the prior calendar year to the Governor, the Chief Justice of
24 the Supreme Court, the President Pro Tempore of the Senate and the

1 Speaker of the House of Representatives which shall include a
2 statement of the number of awards made and the causes of the
3 accidents leading to the injuries for which the awards were made,
4 total work load data of the Court, a detailed report of the work
5 load of the judges of the Court, a detailed statement of the
6 expenses of the office of the Administrator of Workers' Compensation
7 Court of Existing Claims, together with any other matter which the
8 Administrator deems proper to report to the Governor including any
9 recommendations he or she may desire to make.

10 Q. Subject to the availability of funds, the Judge of the Court
11 of Existing Claims may employ one at-will full- or part-time special
12 workers' compensation judge with jurisdiction to hear cases as set
13 forth in subsection M of this section and as may be assigned by the
14 Judge. The special workers' compensation judge shall receive
15 compensation for such services in accordance with the provisions of
16 Section 92.1A of Title 20 of the Oklahoma Statutes.

17 SECTION 3. Section 1 of this act shall become effective January
18 1, 2024.

19 SECTION 4. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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24 59-1-8350 MAH 05/08/23

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