

**CONSTRUCTION INDUSTRIES BOARD REFERENCE MATERIAL  
OKLAHOMA WORKERS' COMPENSATION ACT STATUTORY EXCERPTS**

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**Title 85A, Section 1  
Short title--Administrative Workers' Compensation Act**

Sections 1 through 106 and 150 through 168 of this act shall be known and may be cited as the "Administrative Workers' Compensation Act". The provisions of the Administrative Workers' Compensation Act shall be strictly construed.

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**Title 85A, Section 3  
Applicability of act**

A. Every employer and every employee, unless otherwise specifically provided in this act, shall be subject and bound to the provisions of the Administrative Workers' Compensation Act. However, nothing in this act shall be construed to conflict with any valid Act of Congress governing the liability of employers for injuries received by their employees.

B. This act shall apply only to claims for injuries and death based on accidents which occur on or after the effective date of this act.

C. The Workers' Compensation Code in effect before the effective date of this act shall govern all rights in respect to claims for injuries and death based on accidents occurring before the effective date of this act.

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**Title 85A, Section 7  
Discrimination or retaliation**

A. An employer may not discriminate or retaliate against an employee when the employee has in good faith:

1. Filed a claim under this act;
2. Retained a lawyer for representation regarding a claim under this act;
3. Instituted or caused to be instituted any proceeding under the provisions of this act; or
4. Testified or is about to testify in any proceeding under the provisions of this act.

B. The Commission shall have exclusive jurisdiction to hear and decide claims based on subsection A of this section.

C. If the Commission determines that the defendant violated subsection A of this section, the Commission may award the employee back pay up to a maximum of One Hundred Thousand Dollars (\$100,000.00). Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall reduce the back pay otherwise allowable.

D. The prevailing party shall be entitled to recover costs and a reasonable attorney fee.

E. No employer may discharge an employee during a period of temporary total disability for the sole reason of being absent from work or for the purpose of avoiding payment of temporary total disability benefits to the injured employee.

F. Notwithstanding any other provision of this section, an employer shall not be required to rehire or retain an employee who, after temporary total disability has been exhausted, is determined by a physician to be physically unable to perform his or her assigned duties, or whose position is no longer available.

G. This section shall not be construed as establishing an exception to the employment at will doctrine.

H. The remedies provided for in this section shall be exclusive with respect to any claim arising out of the conduct described in subsection A of this section.

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**Title 85A, Section 8**  
**Agreement to waive compensation**

A. No agreement by an employee to waive his or her right to compensation shall be valid. No contract, regulation, or device shall operate to relieve the employer or carrier, in whole or in part, from any liability created by this act, except as specifically provided in this act.

B. Any officer of a corporation, sole proprietor, partner of a partnership, member of a limited liability company, member of a professional association, or self-employed employer who is not a subcontractor and who owns and operates his or her own business may, by agreement or contract, exclude himself or herself from coverage or waive his or her right to coverage or compensation under this act.

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**Title 85A, Section 27**  
**Jurisdiction--Duties and powers of administrative judges**

A. The Workers' Compensation Commission shall be vested with jurisdiction over all claims filed pursuant to the Administrative Workers' Compensation Act. All claims so filed shall be heard by the administrative law judge sitting without a jury. The Commission shall have full power and authority to determine all questions in relation to claims for compensation under the provisions of the Administrative Workers' Compensation Act. The Commission, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. Except as provided in this act, the decision of the administrative law judge shall be final as to all questions of fact and law. The decision of the administrative law judge shall be issued within thirty (30) days following the submission of the case by the parties. The power and jurisdiction of the Commission over each case shall be

continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified.

B. In addition to the duties set forth in this section, the administrative law judges shall have the following duties and powers:

1. To hear and determine claims for compensation, to conduct hearings and investigations, and to make such judgments, decisions, and determinations as may be required by any rule or judgment of the Commission;

2. To hear and determine challenges to an agreement to arbitrate under the Workers' Compensation Arbitration Act;

3. To assume duties within the Workers' Compensation Court of Existing Claims as assigned by the Commission; and

4. To have and exercise all other powers and duties conferred or imposed by the Commission or this act.

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**Title 85A, Section 35**  
**Obligation to pay**

A. 1. Every employer shall secure compensation as provided under this act to its employees for compensable injuries without regard to fault.

2. There shall be no liability for compensation under this act where the injury or death was substantially occasioned by the willful intention of the injured employee to bring about such compensable injury or death.

B. The primary obligation to pay compensation is on the employer, and the procurement of a policy of insurance by an employer to cover the obligation in respect to this act shall not relieve the employer of the obligation.

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**Title 85A, Section 36**  
**Liability other than immediate employer**

A. If a subcontractor fails to secure compensation required by this act, the prime contractor shall be liable for compensation to the employees of the subcontractor unless there is an intermediate subcontractor who has workers' compensation coverage.

B. 1. Any contractor or the contractor's insurance carrier who shall become liable for the payment of compensation on account of injury to or death of an employee of his or her subcontractor may recover from the subcontractor the amount of the compensation paid or for which liability is incurred.

2. The claim for the recovery shall constitute a lien against any monies due or to become due to the subcontractor from the prime contractor.

3. A claim for recovery shall not affect the right of the injured employee or the dependents of the deceased employee to recover compensation due from the prime contractor or his or her insurance carrier.

C. 1. a. When a sole proprietorship or partnership fails to elect to cover the sole proprietor or partners under this act, the prime contractor is not liable under this act for injuries sustained by the sole proprietor or partners if the sole proprietor or partners are not employees of the prime contractor.

b. (1) A sole proprietor or the partners of a partnership who do not elect to be covered by this act and be deemed employees thereunder and who deliver to the prime contractor a current certification of noncoverage issued by the Commission shall be conclusively presumed not to be covered by the law or to be employees of the prime contractor during the term of his or her certification or any renewals thereof.

(2) A certificate of noncoverage may not be presented to a subcontractor who does not have workers' compensation coverage.

(3) This provision shall not affect the rights or coverage of any employees of the sole proprietor or of the partnership.

2. The prime contractor's insurance carrier shall not be liable for injuries to the sole proprietor or partners described in this section who have provided a current certification of noncoverage, and the carrier shall not include compensation paid by the prime contractor to the sole proprietor or partners described above in computing the insurance premium for the prime contractor.

3. a. Any prime contractor who after being presented with a current certification of noncoverage by a sole proprietor or partnership compels the sole proprietor or partnership to pay or contribute to workers' compensation coverage of that sole proprietor or partnership shall be guilty of a misdemeanor.

b. Any prime contractor who compels a sole proprietor or partnership to obtain a certification of noncoverage when the sole proprietor or partnership does not desire to do so shall be guilty of a misdemeanor.

c. Any applicant who makes a false statement when applying for a certification of noncoverage or any renewals thereof shall be guilty of a felony.

D. 1. A certification of noncoverage issued by the Commission shall be valid for two (2) years after the effective date stated thereon. Both the effective date and the expiration date shall be listed on the face of the certificate by the Commission. The certificate shall expire at midnight two (2) years from its issue date, as noted on the face of the certificate.

2. The Commission may assess a fee not to exceed Fifty Dollars (\$50.00) with each application for a certification of noncoverage or any renewals thereof.

3. Any certification of noncoverage issued by the Commission shall contain the social security number and notarized signature of the applicant. The notarization shall be in a form and manner prescribed by the Commission.

4. The Commission may prescribe by rule forms and procedures for issuing or renewing a certification of noncoverage.

E. If work is performed by an independent contractor on a single-family residential dwelling occupied by the owner, or the premises of such dwelling, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under this act for injuries to the independent contractor or his or her employees.

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**Title 85A, Section 38**  
**Securing compensation**

A. An employer shall secure compensation to employees under this act in one of the following ways:

1. By insuring and keeping insured the payment of compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state. When an insurer issues a policy to provide workers' compensation benefits under the provisions of this act, it shall file a notice with the Commission containing the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Commission. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who does not file the notice required by this paragraph shall be subject to a fine by the Commission of not more than One Thousand Dollars (\$1,000.00);

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues workers' compensation guaranty insurance shall file a copy of the contract with the Commission within thirty (30) days after the effective date of the contract. Any company that does not file a copy of the contract as required by this paragraph shall be subject to a fine by the Commission of not more than One Thousand Dollars (\$1,000.00);

3. By furnishing satisfactory proof to the Commission of the employer's financial ability to pay the compensation. The Commission, under rules adopted by the Insurance Department, shall require any employer that has:

- a. less than one hundred employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
  - (1) deposit with the Commission securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
  - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act, and
- b. one hundred or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:

- (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
- (2) provide proof of excess coverage with terms and conditions that are commensurate with their ability to pay the benefits required by the provisions of this act;

4. By forming a group self-insurance association consisting of two or more employers which shall have a common interest and which shall have entered into an agreement to pool their liabilities under the Administrative Workers' Compensation Act. Such agreement shall be subject to rules of the Commission. Any employer, upon application to become a member of a group self-insurance association, shall file with the Commission a notice, in such form as prescribed by the Commission, acknowledging that the employer accepts joint and several liability. Upon approval by the Commission of such application for membership, said member shall be a qualified self-insured employer; or

5. By any other security as may be approved by the Commission and the Insurance Department.

B. The Commission may waive the requirements of this section in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this subsection shall contain such terms as may be prescribed by the Commission and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

C. An employer who does not fulfill the requirements of this section is not relieved of the obligation to pay compensation under this act. The security required under this section, including any interest, shall be maintained by the Commission as provided in this act until each claim for benefits is paid, settled, or lapses under this act, and costs of administration of such claims are paid.

D. Failure on the part of any employer to secure the payment of compensation provided in this act shall have the effect of enabling the Commission to assert the rights of an injured employee against the employer.

E. Any employer that knowingly provides false information to the Commission for purposes of securing or maintaining a self-insurance permit shall be guilty of a felony and subject to a maximum fine of Ten Thousand Dollars (\$10,000.00).

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**Title 85A, Section 41**  
**Posted notice of secured compensation**

A. Every employer who has secured compensation under the provisions of this act shall keep posted in a conspicuous place in and about the employer's place of business typewritten or printed notices in accordance with a form prescribed by the Commission. The notices shall state that the employer has secured the payment of compensation in accordance with the provisions of this act.

B. The notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

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**Title 85A, Section 42**  
**Required insurance policy provisions**

A. Contents. Every policy or contract of insurance issued by a carrier to an employer to secure the payment of compensation under this act shall contain:

1. a. Provisions that identify the insured employer and either identify each covered employee or describe covered employees by class or type of labor performed and the estimated number of employees of each such class or type.
- b. No single policy of workers' compensation insurance may be issued to any group of employers who are unaffiliated with one another in terms of ownership, control, or right to participate in the profits of the affiliated enterprises;
2. Provisions that insolvency or bankruptcy of the employer or discharge therein shall not relieve the carrier from payment of compensation for compensable injuries sustained by an employee during the term of the policy or contract;
3. a. The agreement of the carrier that it shall promptly pay to the person entitled to compensation every installment of compensation that may be awarded or agreed on and that this obligation shall not be affected by any default of the employer or by any default in the giving of any notice required by the policy or otherwise.
- b. The agreement shall be construed to be a direct obligation by the carrier to the person entitled to compensation, enforceable in that person's name; and
4. Such other provisions as the Insurance Department allows or requires carriers to include in workers' compensation policies.

B. Cancellation.

1. An employer may cancel coverage with a carrier by giving the carrier at least thirty (30) days' notice, unless a shorter period is permitted under subparagraph b of this paragraph.
  - a. Cancellation of coverage is effective at 12:01 a.m. thirty (30) days after the date the cancellation notice is received by the carrier, unless a later date is specified in the notice to the carrier.
  - b. (1) An employer may cancel coverage effective less than thirty (30) days after written notice is received by the carrier where the employer obtains other coverage or becomes a self-insurer.
  - (2) A cancellation under this subsection is effective immediately on the effective date of the other coverage or on authorization as a self-insurer.
2. a. A notice of cancellation from the carrier shall state the hour and date that cancellation is effective.

- b. A carrier shall not cancel coverage issued to an employer under this act before the date specified for expiration in the policy or contract or until at least thirty (30) days have elapsed after a notice of cancellation has been mailed to the Commission and to the employer, or until ten (10) days have elapsed after the notice has been mailed to the employer and to the Commission if the cancellation is for nonpayment of premium.
- c. If the employer procures other insurance within the notice period, the effective date of the new policy shall be the cancellation date of the old policy.

3. Cancellation of coverage by an employer or a carrier shall in no way limit liability that was incurred under the policy or contract before the effective date of cancellation.

C. Coverage.

1. No policy or contract of insurance shall be issued against liability under this act unless the policy or contract covers the entire liability of the employer. Split coverage whereby some employees of an employer are insured by one carrier and other employees are insured by another carrier, or a plan of self-insurance, is expressly prohibited except for a policy issued covering the liability of an employer or of multiple employers as to specific jobs, ventures, contracts, or undertakings, but only if the policy meets with the reasonable satisfaction and approval of the Insurance Commissioner that the policy is in the best interest of the employers and the employees concerned and does not unduly or improperly affect the continuity of workers' compensation coverage by seriously and negatively affecting other carriers and agents with outstanding policies issued to any of the employers in issue.

2. The terms of the policy or contract shall govern any questions of liability between the employer and the carrier.

D. Under such rules as may be adopted by the Insurance Commissioner, and notwithstanding other provisions of this act, he or she may certify five or more employers as an insurance group which shall be considered an employer for the purposes of this act.

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**Title 85A, Section 45**

**Temporary total disability--Temporary partial disability--Permanent partial disability--Permanent total disability**

A. Temporary Total Disability.

1. If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall be entitled to receive compensation equal to seventy percent (70%) of the injured employee's average weekly wage, but not to exceed seventy percent (70%) of the state average weekly wage, for one hundred four (104) weeks. Provided, there shall be no payment for the first three (3) days of the initial period of temporary total disability. If an administrative law judge finds that a consequential injury has occurred and that additional time is needed to reach maximum medical improvement, temporary total disability may continue for a period of not more than an additional fifty-two (52) weeks. Such finding shall be based upon a showing of medical necessity by clear and convincing evidence.



2. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Commission to be injured, or in the event that the employee, without a valid excuse, misses three consecutive medical treatment appointments, fails to comply with medical orders of the treating physician, or otherwise abandons medical care, the employer shall be entitled to terminate temporary total disability by notifying the employee, or if represented, his or her counsel. If, however, an objection to the termination is filed by the employee within ten (10) days of termination, the Commission shall set the matter within twenty (20) days for a determination if temporary total disability compensation shall be reinstated. The temporary total disability shall remain terminated unless the employee proves the existence of a valid excuse for his or her failure to comply with medical orders of the treating physician or his or her abandonment of medical care. The administrative law judge may appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker, unless agreed upon by the parties.

#### B. Temporary Partial Disability.

1. If the injured employee is temporarily unable to perform his or her job, but may perform alternative work offered by the employer, he or she shall be entitled to receive compensation equal to the greater of seventy percent (70%) of the difference between the injured employee's average weekly wage before the injury and his or her weekly wage for performing alternative work after the injury, but only if his or her weekly wage for performing the alternative work is less than the temporary total disability rate.

2. Compensation under this subsection may not exceed fifty-two (52) weeks.

3. If the employee refuses to perform the alternative work offered by the employer, he or she shall not be entitled to benefits under subsection A of this section or under this section.

#### C. Permanent Partial Disability.

1. A permanent partial disability award or combination of awards granted an injured worker may not exceed a permanent partial disability rating of one hundred percent (100%) to any body part or to the body as a whole. The determination of permanent partial disability shall be the responsibility of the Commission through its administrative law judges. Any claim by an employee for compensation for permanent partial disability must be supported by competent medical testimony of a medical doctor, osteopathic physician, or chiropractor, and shall be supported by objective medical findings, as defined in this act. The opinion of the physician shall include employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease. A physician's opinion of the nature and extent of permanent partial disability to parts of the body other than scheduled members must be based solely on criteria established by the current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment". A copy of any written evaluation shall be sent to both parties within seven (7) days of issuance. Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Any party may submit the report of an evaluating physician.

2. Permanent partial disability shall not be allowed to a part of the body for which no medical treatment has been received. A determination of permanent partial disability made by the Commission or administrative law judge which is not supported by objective medical findings provided by a treating physician who is a medical doctor, doctor of osteopathy, chiropractor or a qualified independent medical examiner shall be considered an abuse of discretion.

3. The examining physician shall not deviate from the Guides except as may be specifically provided for in the Guides.

4. In cases of permanent partial disability, the compensation shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per week, for a term not to exceed a total of three hundred fifty (350) weeks for the body as a whole.

5. Except pursuant to settlement agreements entered into by the employer and employee, payment of a permanent partial disability award shall be deferred and held in reserve by the employer or insurance company if the employee has reached maximum medical improvement and has been released to return to work by his or her treating physician, and then returns to his pre-injury or equivalent job for a term of weeks determined by dividing the total dollar value of the award by seventy percent (70%) of the employee's average weekly wage.

- a. The amount of the permanent partial disability award shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he works in his pre-injury or equivalent job.
- b. If, for any reason other than misconduct as defined in Section 2 of this act, the employer terminates the employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.
- c. If the employee refuses an offer to return to his pre-injury or equivalent job, the permanent partial disability award shall continue to be deferred and shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he refuses to return to his pre-injury or equivalent job.
- d. Attorney fees for permanent partial disability awards, as approved by the Commission, shall be calculated based upon the total permanent partial disability award and paid in full at the time of the deferral.
- e. Assessments pursuant to Sections 31, 98, 112 and 165 of this act shall be calculated based upon the amount of the permanent partial disability award and shall be paid at the time of the deferral.

6. Previous Disability: The fact that an employee has suffered previous disability or received compensation therefor shall not preclude the employee from compensation for a later accidental personal injury or occupational disease. In the event there exists a previous permanent partial disability, including a previous non-work-related injury or condition which produced permanent partial disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent partial disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the preexisting disability or impairment. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

- a. If workers' compensation benefits have previously been awarded through settlement or judicial or administrative determination in Oklahoma, the percentage basis of the prior settlement or award shall conclusively establish the amount of permanent partial disability

determined to be preexisting. If workers' compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Oklahoma, the amount of preexisting permanent partial disability shall be established by competent evidence.

b. In all cases, the applicable reduction shall be calculated as follows:

(1) if the preexisting impairment is the result of injury sustained while working for the employer against whom workers' compensation benefits are currently being sought, any award of compensation shall be reduced by the current dollar value attributable under the Administrative Workers' Compensation Act to the percentage of permanent partial disability determined to be preexisting. The current dollar value shall be calculated by multiplying the percentage of preexisting permanent partial disability by the compensation rate in effect on the date of the accident or injury against which the reduction will be applied, and

(2) in all other cases, the employer against whom benefits are currently being sought shall be entitled to a credit for the percentage of preexisting permanent partial disability.

7. No payments on any permanent partial disability order shall begin until payments on any preexisting permanent partial disability orders have been completed.

8. The whole body shall represent a maximum of three hundred fifty (350) weeks.

9. The permanent partial disability rate of compensation for amputation or permanent total loss of use of a scheduled member specified in Section 46 of this act shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00), multiplied by the number of weeks set forth for the member in Section 46 of this act, regardless of whether the injured employee is able to return to his or her pre-injury or equivalent job.

10. An injured employee who is eligible for permanent partial disability under this subsection shall be entitled to receive vocational rehabilitation services provided by a technology center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, which shall include retraining and job placement to restore the employee to gainful employment. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks.

#### D. Permanent Total Disability.

1. In case of total disability adjudged to be permanent, seventy percent (70%) of the employee's average weekly wages, but not in excess of the state's average weekly wage, shall be paid to the employee during the continuance of the disability until such time as the employee reaches the age of maximum Social Security retirement benefits or for a period of fifteen (15) years, whichever is longer. In the event the claimant dies of causes unrelated to the injury or illness, benefits shall cease on the date of death. Provided, however, any person entitled to revive the action shall receive a one-time lump-sum payment equal to twenty-six (26) weeks of weekly benefits for permanent total disability awarded the claimant. If more than one person is entitled to revive the claim, the lump-sum payment shall be evenly divided between or among such persons. In the event the Commission awards both permanent partial disability and permanent total disability benefits, the permanent total disability award shall not be due until the permanent partial disability award is paid in full. If otherwise qualified according to the provisions of this

act, permanent total disability benefits may be awarded to an employee who has exhausted the maximum period of temporary total disability even though the employee has not reached maximum medical improvement.

2. The Commission shall annually review the status of any employee receiving benefits for permanent total disability against the last employer. The Commission shall require the employee to annually file an affidavit under penalty of perjury stating that he or she is not and has not been gainfully employed and is not capable of gainful employment. Failure to file such affidavit shall result in suspension of benefits; provided, however, reinstatement of benefits may occur after proper hearing before the Commission.

E. 1. The Workers' Compensation Commission shall hire or contract for a Vocational Rehabilitation Director to oversee the vocational rehabilitation program of the Commission.

2. The Vocational Rehabilitation Director shall help injured workers return to the work force. If the injured employee is unable to return to his or her pre-injury or equivalent position due to permanent restrictions as determined by the treating physician, upon the request of either party, the Vocational Rehabilitation Director shall determine if it is appropriate for a claimant to receive vocational rehabilitation training or services, and will oversee such training. If appropriate, the Vocational Rehabilitation Director shall issue administrative orders, including, but not limited to, an order for a vocational rehabilitation evaluation for any injured employee unable to work for at least ninety (90) days. In addition, the Vocational Rehabilitation Director may assign injured workers to vocational rehabilitation counselors for coordination of recommended services. The cost of the services shall be paid by the employer. All administrative orders are subject to appeal to the full Commission.

3. There shall be a presumption in favor of ordering vocational rehabilitation services or training for an eligible injured employee under the following circumstances:

- a. if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,
- b. if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,
- c. if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,
- d. if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,
- e. if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,
- f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,
- g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,

- h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,
- i. if the employee's occupation is heavy manual laborer and the medical condition is total knee replacement or total hip replacement,
- j. if the employee's occupation is roofer and the medical condition is calcaneal fracture, medically or surgically treated,
- k. if the employee's occupation is laborer of any kind and the medical condition is total shoulder replacement,
- l. if the employee's occupation is laborer and the medical condition is amputation of a hand, arm, leg, or foot,
- m. if the employee's occupation is laborer and the medical condition is tibial plateau fracture, pilon fracture,
- n. if the employee's occupation is laborer and the medical condition is ankle fusion or knee fusion,
- o. if the employee's occupation is driver or heavy equipment operator and the medical condition is unilateral industrial blindness, or
- p. if the employee's occupation is laborer and the medical condition is 3-, 4-, or 5-level positive discogram of the cervical spine or lumbar spine, medically treated.

4. Upon the request of either party, or by order of an administrative law judge, the Vocational Rehabilitation Director shall assist the Workers' Compensation Commission in determining if it is appropriate for a claimant to receive vocational rehabilitation training or services. If appropriate, the administrative law judge shall refer the employee to a qualified expert for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ordered by the administrative law judge, or fails to complete in good faith the vocational rehabilitation training ordered by the administrative law judge, then the cost of the evaluation and services or training rendered may, in the discretion of the administrative law judge, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and after affording all parties an opportunity to be heard, the administrative law judge shall order that any rehabilitation services or training, recommended in the report, or such other rehabilitation services or training as the administrative law judge may deem necessary, provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

5. The administrative law judge may order vocational rehabilitation before the injured employee reaches maximum medical improvement, if the treating physician believes that it is likely that the employee's injury will prevent the employee from returning to his or her former employment. In granting early benefits for vocational rehabilitation, the Commission shall consider temporary restrictions and the likelihood that such rehabilitation will return the employee to gainful employment earlier than if such benefits are granted after the permanent partial disability hearing in the claim.

6. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. A request for vocational rehabilitation services or training shall be filed with the Commission by an interested party not later than sixty (60) days from the date of receiving permanent restrictions that prevent the injured employee from returning to his or her pre-injury or equivalent position.

7. If rehabilitation requires residence at or near the facility or institution which is away from the employee's customary residence, reasonable cost of the employee's board, lodging, travel, tuition, books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Administrative Workers' Compensation Act.

8. During the period when an employee is actively and in good faith being evaluated or participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits for an additional fifty-two (52) weeks. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the facility providing the vocational rehabilitation services or training to the employee. The employer or employer's insurer may deduct the amount paid for tuition from compensation awarded to the employee.

F. Disfigurement.

1. If an injured employee incurs serious and permanent disfigurement to any part of the body, the Commission may award compensation to the injured employee in an amount not to exceed Fifty Thousand Dollars (\$50,000.00).

2. No award for disfigurement shall be entered until twelve (12) months after the injury.

3. An injured employee shall not be entitled to compensation under this subsection if he or she receives an award for permanent partial disability to the same part of the body.

G. Benefits for a single-event injury shall be determined by the law in effect at the time of injury. Benefits for a cumulative trauma injury or occupational disease or illness shall be determined by the law in effect at the time the employee knew or reasonably should have known that the injury, occupational disease or illness was related to work activity. Benefits for death shall be determined by the law in effect at the time of death.

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**Title 85A, Section 51**

**Payment of medical expenses**

The employer shall pay one hundred percent (100%) of the medical expenses, subject to the Fee Schedule, with no maximum dollar or duration limits for all compensable injuries.

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**Title 85A, Section 52**

**Liability for non-compensable injury**

The employer shall not be liable for any of the payments for medical services and supplies under this act if the Commission determines that there was not a compensable injury.

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**Title 85A, Section 63**  
**Reports**

A. Within ten (10) days after the date of receipt of notice or of knowledge of injury or death, the employer shall send to the Commission a report setting forth:

1. The name, address, and business of the employer;
2. The name, address, and occupation of the employee;
3. The cause and nature of the injury or death;
4. The year, month, day, approximately when, and the particular locality where, the injury or death occurred; and
5. Such other information as the Commission may require.

B. Additional reports with respect to the injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe. However, an employer may refuse to provide any information that it deems privileged or confidential.

C. Any report provided for in subsection A or B of this section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death on account of which the report is made.

D. The mailing of any report in a stamped envelope, properly addressed, within the time prescribed in subsection A or B of this section, shall be in compliance with this section. In addition, the Commission shall establish a means of electronic delivery of any report or other information required by this section.

E. 1. Any employer who after notice refuses to send any report required by this section shall be subject to a civil penalty in an amount of Five Hundred Dollars (\$500.00) for each refusal.

2. Whenever the employer has failed or refused to comply as provided in this section, the Commission may serve on the employer a proposed judgment declaring the employer to be in violation of this act and containing the amount, if any, of the civil penalty to be assessed against the employer under this section.

F. An employer may contest a proposed judgment of the Commission issued under subsection E of this section by filing with the Commission, within twenty (20) days of receipt of the proposed judgment, a written request for a hearing. If a written request for hearing is not filed with the Commission within this time, the proposed judgment, proposed penalty, or both, shall be a final judgment of the Commission. The request for a hearing does not need to be in any particular form but shall specify the grounds on which the person contests the proposed judgment, the proposed assessment, or both. A proposed judgment by the Commission under this section shall be prima facie correct, and the burden is on the employer to prove that the proposed judgment is incorrect.

G. Hearings conducted under this section shall proceed as provided in Sections 69 through 78 of this act.

H. If an employer fails to pay any civil penalty assessed against the employer after a judgment issued under this section has become final by operation of law, the Commission may petition the district court of the county where the employer's principal place of business is located for an order enjoining the employer from engaging in further employment or conduct of business until such time as the employer makes all required reports and pays all civil penalties.

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