

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

As Engrossed: S2/20/01

83rd General Assembly

A Bill

Regular Session, 2001

SENATE BILL 489

By: Senators DeLay, Everett

By: Representatives Ledbetter, *Rodgers*

For An Act To Be Entitled

AN ACT TO AMEND DEFINITIONS IN THE WORKERS'
COMPENSATION LAWS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND DEFINITIONS IN THE WORKERS'
COMPENSATION LAWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 11-9-102 is amended to read as follows:

11-9-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state. Whenever required by the context, the term "carrier" shall be deemed to include duly qualified self-insureds or self-insured groups;

(2) "Child" means a natural child, a posthumous child, a child legally adopted prior to injury of the employee, a stepchild, an acknowledged illegitimate child of the deceased or of the spouse of the deceased, and a foster child;

(3) "Commission" means the Workers' Compensation Commission;

(4)(A) "Compensable injury" means:

(i) An ~~accidental~~ injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in

1 the course of employment and which requires medical services or results in
2 disability or death. ~~An injury is "accidental" only if it is caused by a~~
3 ~~specific incident and is identifiable by time and place of occurrence;~~

4 ~~(ii) An injury causing internal or external physical harm~~
5 ~~to the body and arising out of and in the course of employment if it is not~~
6 ~~caused by a specific incident or is not identifiable by time and place of~~
7 ~~occurrence, if the injury is:~~

8 ~~(a) Caused by rapid repetitive motion. Carpal tunnel~~
9 ~~syndrome is specifically categorized as a compensable injury falling within~~
10 ~~this definition;~~

11 ~~(b) A back injury which is not caused by a specific~~
12 ~~incident or which is not identifiable by time and place of occurrence; or~~

13 ~~(c) Hearing loss which is not caused by a specific~~
14 ~~incident or which is not identifiable by time and place of occurrence;~~

15 ~~(iii)(ii)~~ Mental illness as set out in § 11-9-113;

16 ~~(iv)(iii)~~ Heart or cardiovascular injury, accident, or
17 disease as set out in § 11-9-114; or

18 ~~(v)(iv)~~ A hernia as set out in § 11-9-523.

19 (B) "Compensable injury" does not include:

20 (i) Injury to any active participant in assaults or combats
21 which, although they may occur in the workplace, are the result of
22 nonemployment-related hostility or animus of one, both, or all of the
23 combatants and which said assault or combat amounts to a deviation from
24 customary duties; further, except for innocent victims, injuries caused by
25 horseplay shall not be considered to be compensable injuries;

26 (ii) Injury incurred while engaging in or performing or as
27 the result of engaging in or performing any recreational or social activities
28 for the employee's personal pleasure;

29 (iii) Injury which was inflicted upon the employee at a
30 time when employment services were not being performed or before the employee
31 was hired or after the employment relationship was terminated; or

32 (iv)(a) Injury where the accident was substantially
33 occasioned by the use of alcohol, illegal drugs, or prescription drugs used in
34 contravention of physician's orders.

35 (b) The presence of alcohol, illegal drugs, or
36 prescription drugs used in contravention of a physician's orders shall create

1 a rebuttable presumption that the injury or accident was substantially
2 occasioned by the use of alcohol, illegal drugs, or prescription drugs used in
3 contravention of physician's orders.

4 (c) Every employee is deemed by his performance of
5 services to have impliedly consented to reasonable and responsible testing by
6 properly trained medical or law enforcement personnel for the presence of any
7 of the aforementioned substances in the employee's body.

8 (d) An employee shall not be entitled to compensation
9 unless it is proved by a preponderance of the evidence that the alcohol,
10 illegal drugs, or prescription drugs utilized in contravention of the
11 physician's orders did not substantially occasion the injury or accident.

12 (C) The definition of "compensable injury" as set forth in this
13 subdivision (4) shall not be deemed to limit or abrogate the right to recover
14 for mental injuries as set forth in § 11-9-113 or occupational diseases as set
15 forth in § 11-9-601 et seq.

16 (D) A compensable injury must be established by medical evidence
17 supported by "objective findings" as defined in subdivision (16) of this
18 section.

19 (E) Burden of Proof. The burden of proof of a compensable injury
20 shall be on the employee and shall be as follows:

21 (i) For injuries falling within the definition of
22 compensable injury under subdivision (4)(A)(i) of this section, the burden of
23 proof shall be a preponderance of the evidence; or

24 (ii) For injuries falling within the definition of
25 compensable injury under subdivision (4)(A)(ii) of this section, the burden of
26 proof shall be by a preponderance of the evidence, and the resultant condition
27 is compensable only if the alleged compensable injury is the major cause of
28 the disability or need for treatment.

29 (F) Benefits.

30 (i) When an employee is determined to have a compensable
31 injury, the employee is entitled to medical and temporary disability as
32 provided by this chapter.

33 (ii)(a) Permanent benefits shall be awarded only upon a
34 determination that the compensable injury was the major cause of the
35 disability or impairment.

36 (b) If any compensable injury combines with a

1 preexisting disease or condition or the natural process of aging to cause or
2 prolong disability or a need for treatment, permanent benefits shall be
3 payable for the resultant condition only if the compensable injury is the
4 major cause of the permanent disability or need for treatment.

5 (iii) Under this subdivision (4)(F), benefits shall
6 not be payable for a condition which results from a nonwork-related
7 independent intervening cause following a compensable injury which causes or
8 prolongs disability or a need for treatment. A nonwork-related independent
9 intervening cause does not require negligence or recklessness on the part of a
10 claimant.

11 (iv) Nothing in this section shall limit the payment
12 of rehabilitation benefits or benefits for disfigurement as set forth in this
13 chapter;

14 (5) "Compensation" means the money allowance payable to the employee or
15 to his dependents and includes the allowances provided for in § 11-9-509 and
16 funeral expenses;

17 (6) "Death" means only death resulting from compensable injury as
18 defined in subdivision (4) of this section;

19 (7) "Department" means the State Insurance Department;

20 (8) "Disability" means incapacity because of compensable injury to
21 earn, in the same or any other employment, the wages which the employee was
22 receiving at the time of the compensable injury;

23 (9)(A) "Employee" means any person, including a minor, whether lawfully
24 or unlawfully employed in the service of an employer under any contract of
25 hire or apprenticeship, written or oral, expressed or implied, but excluding
26 one whose employment is casual and not in the course of the trade, business,
27 profession, or occupation of his employer and excluding one who is required to
28 perform work for a municipality or county or the state or federal government
29 upon having been convicted of a criminal offense or while incarcerated.

30 (B) The term "employee" shall also include a sole proprietor,
31 partner, or member who devotes full time to the proprietorship, partnership,
32 or limited liability company. However, any sole proprietor, partner of a
33 partnership, or member of a limited liability company who desires not to be
34 included in the definition of "employee" may file for and receive a
35 certification of noncoverage under this chapter from the commission.

36 (C) The term "employee" shall not include any individual who is

1 both a "licensee" as defined in § 17-42-103(10) and a "qualified real estate
2 agent" as that term is defined in § 3508(b)(1) of the Internal Revenue Code of
3 1986, including all regulations thereunder.

4 (D) Any individual receiving from the commission a certification
5 of noncoverage under this chapter shall thereafter or until he elects
6 otherwise be conclusively presumed not to be an employee for purposes of this
7 chapter or otherwise.

8 (E) No election by a sole proprietor, partnership, or limited
9 liability company under this subdivision (9) shall affect the rights or the
10 coverage under this chapter of any employees of those sole proprietors,
11 partners, or members.

12 (F) Any reference to an employee who has been injured, when that
13 employee is dead, shall also include his legal representative, dependents, and
14 other persons to whom compensation may be payable;

15 (10) "Employer" means any individual, partnership, limited liability
16 company, association, or corporation carrying on any employment, the receiver
17 or trustee of the same, or the legal representative of a deceased employer;

18 (11) "Employment" means:

19 (A) Every employment in the state in which three (3) or more
20 employees are regularly employed by the same employer in the course of
21 business except:

22 (i) An employee employed as a domestic servant in or about
23 a private home;

24 (ii) An employee employed to do gardening, maintenance,
25 repair, remodeling, or similar work in or about the private home or residence
26 of the person employing the employee;

27 (iii) Agricultural farm labor;

28 (iv) The State of Arkansas and each of the political
29 subdivisions thereof except as provided by §§ 6-17-1401 - 6-17-1405, 14-26-101
30 - 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103, 19-10-202 - 19-10-
31 210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;

32 (v) A person for whom a rule of liability for injury or
33 death arising out of and in the course of employment is provided by the laws
34 of the United States;

35 (vi) A person performing services for any nonprofit
36 religious, charitable, or relief organization;

(vii) Any person engaged in the vending, selling, offering for sale, or delivery directly to the general public of any newspapers, magazines, or periodicals or any person acting as sales agent or distributor as an independent contractor of or for any newspaper, magazine, or periodical; and

(viii) Any individual who is both a "licensee" as defined in § 17-42-103(10) and a "qualified real estate agent" as that term is defined in § 3508(b) (1) of the Internal Revenue Code of 1986, including all regulations thereunder;

(B) Every employment in which two (2) or more employees are employed by any person engaged in building or building repair work;

(C) Every employment in which one (1) or more employees are employed by a contractor who subcontracts any part of his contract; and

(D) Every employment in which one (1) or more employees are employed by a subcontractor;

(12) "Healing period" means that period for healing of an injury resulting from an accident;

(13) "Insurance Commissioner" means the Insurance Commissioner of the State of Arkansas;

(14)(A) "Major cause" means more than fifty percent (50%) of the cause.

(B) A finding of major cause shall be established according to the preponderance of the evidence;

(15) "Medical services" means those services specified in § 11-9-508;

(16)(A)(i) "Objective findings" are those findings which cannot come under the voluntary control of the patient.

(ii) When determining physical or anatomical impairment, neither a physician, any other medical provider, an administrative law judge, the Workers' Compensation Commission, nor the courts may consider complaints of pain alone; for the purpose of making. Any physical or anatomical impairment ratings to the spine, straight leg raising tests or range of motion tests shall not be considered objective shall be supported by measurable findings.

(B) Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty supported by a preponderance of the evidence;

(17)(A) "State average weekly wage" means the state average weekly wage

1 determined annually by the Director of the Department of Labor in the
2 preceding calendar year pursuant to § 11-10-502.

3 (B) If, for any reason, the determination is not available, the
4 commission shall determine the wage annually after reasonable investigation
5 and public hearing;

6 (18) "Time of accident" or "date of accident" means the time or date of
7 the occurrence of the accidental incident from which compensable injury,
8 disability, or death results;

9 (19) "Wages" means the money rate at which the service rendered is
10 recompensed under the contract of hiring in force at the time of the accident,
11 including the reasonable value of board, rent, housing, lodging, or similar
12 advantage received from the employer and includes the amount of tips required
13 to be reported by the employer pursuant to § 6053 of the Internal Revenue Code
14 of 1954 and the regulations promulgated pursuant thereto or the amount of
15 actual tips reported, whichever amount is greater; and

16 (20)(A) "Widow" shall include only the decedent's legal wife, living
17 with or dependent for support upon him at the time of his death; and

18 (B) "Widower" shall include only the decedent's legal husband,
19 living with or dependent for support upon her at the time of her death.

20 /s/ DeLay
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36