AN UPDATED ANALYSIS OF SB 1062

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***This analysis covers only major changes to present law***

Horrible for Injured Workers

SB 1062 is a direct assault on the rights and benefits of Oklahoma workers who are injured on the job. The cuts in benefits are deep and unfair. This would set workers' rights in Oklahoma back 120 years.

Highlights of unbelievable reduction in benefits.

Cuts weekly Temporary Total Disability maximum payments by 30%, when the worker is off work on doctor's orders and can least afford it. (section 41)

(1) Amputation awards are greatly reduced from current law: * For a worker making $500 weekly, benefits are drastically cut:  
For an amputated arm, $20,000 less or 23 % less;  
For an amputated hand, $16,000 less or 23 % less;  
For loss of hearing in both ears, $24,000 less or 23 % less (Sections 41 and 42;

(2) Permanent partial disability (PPD) benefits are not allowed if the injured worker returns to his job or an equivalent job for even one day. (This is blatantly unconstitutional and invites litigation for wrongful termination). For example, a worker could have two back surgeries from an injury that no one contests, return to work for one day in a wheelchair, and then either his doctor or the employer could decide the worker could not physically perform the job. Under this bill, THE EMPLOYER WOULD OWE NOTHING FOR PPD. No reasonable person can believe this provision is fair and just. No other state has any such provision. (Section 41)
(3) If the worker cannot go back to work, PPD payments are still drastically reduced. *Example: For an employee making $500 weekly, the award for a back surgical fusion will be cut 25 % (Section 41);

(4) If a worker cannot return to any job, his Permanent Total Disability payments will be cut up to 42 %. *Example: If a 57-year-old worker is injured and found to be permanently and totally disabled, and lives to age 72, his workers' compensation benefits will be cut 42 % (Section 41).

(5) Sadly, widows' death benefits are cut substantially by this bill. *Example: If a worker is killed on a job in which he was earning $600 weekly and leaves a 55-year-old wife, and if the wife remains unmarried and lives to age 80, the widow's death benefits will be cut by 32 % (Section 43).

(6) The bill encourages more claims to be filed by disallowing any claim not reported within three days. At present many employees never file claims because symptoms go away in 10 days. This is an unfair burden.

I do not believe that good Oklahoma employers want to cut benefits so drastically for their injured workers who suffer legitimate injuries and widows who must pick up the pieces after their husband's death.

Most of Oklahoma's employers deal in good faith. They are not interested in sacrificing the quality of compensation and medical care for their workers in exchange for more profit.

Other changes:

Section 2 (7) (b) (5)—Eliminates cumulative trauma injuries due to use of keyboard or video terminal, even though they are work-related.

Section 13—Limits award for a work-related mental claim to a maximum of just $6,500, no matter if all doctors agree the condition is work related and no matter if the worker can return to gainful employment or not.
Section 39—In a third party negligence action, total attorney’s fees and costs would be limited to 20% (blatantly unconstitutional), employer would receive 75% of the net recovery, and the injured worker would get the tiny bit left. Currently, the district court has power to divide the proceeds of a third party recovery.

Section 41 (A)—Cuts by 30% the maximum Temporary Total Disability an injured worker can draw and cuts the maximum time to 2 years, regardless of whether or not the worker is still under active medical care and cannot return to work.

Section 41 (C)—**Drastic reduction in permanent partial disability payments.** The maximum rate is cut by 23% and the worker is not entitled to PPD if he returns to same job, no matter how serious the injury is and how many surgeries he has undergone.

***If the above section is passed, Oklahoma will have the lowest workers’ compensation benefits in the nation***

Section 41 (C) If a worker is injured a second time for the same employer, the employer gets to deduct any payments made on the old claim from the new claim. (blatantly unfair and unconstitutional)

Section 41 (D) Reduces Permanent Total Disability benefits for a worker who cannot return to any gainful employment.

Section 66—Reduces statute of limitation from two years to one year, except for death cases, and dismisses case if a request for trial is not made within six months. This is unrealistic because sometimes medical care is provided for more than a year. This requirement would result in massive bureaucratic red tape with filing of forms to keep a case open while the worker remains under medical care.

Section 131—Sets up an appeal process for a denied claim in the opt out system. The employer appoints a committee to decide the appeal, then it goes to state or federal district court. How can the employer who denies a claim also decide the appeal? This is unfair, burdensome and costly for everyone involved. This denial of due process and standard of review further guarantees that the Supreme Court of Oklahoma will not allow an opt-out employer to enjoy the benefit of exclusive remedy.
Bad for Employers

Section 2 (7) (b) (5)—Eliminates cumulative trauma injuries, including carpal tunnel, from the use of keyboards or video terminals, from workers’ compensation. This would allow a worker to sue the employer in district court for negligence in providing a ergonomically safe place to work. A bonanza for trial lawyers—horrible for business. [ The bill attempts to disallow a district court claim. However, Oklahoma’s constitution says, “For every wrong, there must be a remedy.” If it is not covered by the workers’ compensation laws, district court is the only other place in which to seek a remedy.]

Section 2 (10)—Redefines cumulative trauma claims to “rapid” movement. Invites litigation and perhaps throws such claims into district court. A bonanza for trial lawyers—horrible for business.

Section 13—Greatly limits mental injury claims in workers’ compensation. This would allow a worker to sue the employer in district court for negligence. A bonanza for trial lawyers—horrible for business.

Section 14—Does not allow physical or mental stress to be considered in heart attack cases. This would allow a worker to sue the employer in district court for negligence. A bonanza for trial lawyers—horrible for business.

Section 16—Takes a step back in effort to control medical costs. It makes ODG, the strict treatment guidelines only a “reference.” Present law requires Court to follow ODG, which has proven to cut unnecessary surgeries and pain management by up to 40 percent in other states.

Section 65—Says the employer is not responsible for bills for medical treatment rendered before Notice of Injury is received. If the claim is ultimately found compensable, the employer may have to pay the health insurance company back FROM ITS OWN POCKET, since the insurance carrier would be able to escape liability under this section.

Section 118—Does away with Workers’ Compensation Court on January 1, 2017, and transfers all cases to district court. At any time there are approximately 100,000 claims open in the Workers’ Compensation Court, i.e. permanent and total disability and continuing maintenance medical orders. Litigating these in district court would COST EMPLOYERS AND INSURANCE COMPANIES huge
amounts of money. District court judges are not usually familiar with workers’ compensation law, guaranteeing costly appeals.

Section 129—Proposes that if an employer opts out of the administrative workers’ comp system, it is immune from common law negligence actions in district court. THIS IS UNCONSTITUTIONAL. An employer is only immune from district court liability and unforeseen, runaway jury verdicts if it is part of the statutory workers’ comp system. If the employer opts out, common law negligence is a certainty, a bonanza for trial lawyers.

Section 130—Requires opt-out employers to follow all federal laws such as ERISA. This makes defending a disputed injury claim incredibly expensive in federal court, versus the inexpensive defense of a claim in the present Workers’ Compensation Court.

Section 131—Sets up an appeal process for a denied claim. The employer appoints a committee to decide the appeal, then goes to state or federal district court. Incredibly bureaucratic and costly procedure.

Section 162—The Mandatory Arbitration sections of this bill will result in costly appeals to state district court. Employers lose when they begin fighting their workers’ compensation battles in district court. The average cost of defending a claim before the Oklahoma Workers’ Compensation Court is about $1,500…the cost of defending a claim in district court can be as much as $30,000.

Bad for Taxpayers

Section 19-20—Sets up bureaucratic three-member Workers’ Compensation Commission. This administrative agency would be required to co-exist with present Workers’ Compensation Court to handle open claims for up to 25 years. Allows Commission to hire Administrative Law Judges and staff necessary to carry out the provisions of the proposed law. THERE IS NO LIMIT TO THE NUMBER OF NEW JUDGES.

Section 118—Sets up a Court of Existing Claims to handle open claims of the Workers’ Compensation Court. Cuts short terms of all judges serving on January 1, 2014. (This is unconstitutional and will result in substantial litigation) The new Court of Existing Claims will have four judges. The Judicial Nominating Commission will continue to be involved.
The greatest impact upon taxpayers would be the necessity of maintaining dual systems for at least 20 years. The Oklahoma Supreme Court, in my opinion, will not allow the legislature to shut down the Oklahoma Workers' Comp Court and deny thousands of injured workers due process.

Even if the number of Workers' Compensation Court judges could be cut in half in a few years, the estimated cost of maintaining the Workers' Compensation Court for 20 years, at current dollars, would be approximately $100 MILLION.

The companion Administrative System would cost much more. Without question, administrative systems cost more than court systems. From the latest Arkansas annual report, only 4,000 cases were assigned to the 11 administrative law judges of the Arkansas Workers' Compensation Commission in 2010. The Commission has 112 employees with a $10 million annual budget. Oklahoma has 76 employees with a state budget of only $6.6 million. The 10 Oklahoma workers' compensation judges handled THREE TIMES AS MANY CLAIMS as the judges in Arkansas. Oklahoma's administrative cost is about $550 per case assigned to a judge—compared to $2,500 per case in Arkansas. Oklahoma's system of a judge resolving a claim is five times more cost efficient than Arkansas.

In comparison, Missouri has an annual budget of about $12 million and adjudicates about the same number of claims as Oklahoma. The cost per case assigned to a judge in Missouri is approximately $880.

It is estimated that a bureaucratic Administrative System with an unlimited number of Administrative Law Judges, rate experts, and added personnel, could cost more than the $10 million Arkansas pays each year, yet Arkansas has only about half the number of workplace injuries Oklahoma has.

If Oklahoma can fund an Administrative System for just $12 million annually, that is a cost of $240 million over 20 years of dual systems.

The math is simple. During the next 20 years, Oklahoma taxpayers could foot the bill for an additional $200 million dollars just to allow employers more control over their workers' compensation claims.

SB 1062 is bad for everybody.