

September 23, 2016

Oklahoma Supreme Court renders Employee Injury Benefit Act unconstitutional

On Sept. 13, 2016, the Oklahoma Supreme Court decided 7–2 that a core provision of the Employee Injury Benefit Act (OEIBA), also referred to as the “Oklahoma Option” or “Opt-Out,” created impermissible, unequal, disparate treatment of a select group of injured workers. Therefore, the high court held that OEIBA, in its entirety, is an unconstitutional special law under the Oklahoma Constitution.

This ruling leaves Texas as the only state where workers’ compensation is not mandatory for employers.

The decision stems from the case [*Jonnie Yvonne Vasquez v. Dillard’s Inc.*](#), which was appealed to the state Supreme Court after the Oklahoma Workers’ Compensation Commission (OWCC) unanimously ruled the “Oklahoma Option” as unconstitutional on Feb. 26, 2016.

Background and case summary

The workers’ compensation reform bill passed by the Oklahoma legislature in 2013 provided Oklahoma employers a choice, effective Feb. 1, 2014, between two systems to supply benefits to employees injured on the job:

1. The Administrative Workers’ Compensation Act (AWCA) replaced the Oklahoma Workers’ Compensation Court with a three-member Workers’ Compensation Commission.
2. The Oklahoma Employee Injury Benefit Act (OEIBA) allowed qualified employers to voluntarily elect to be exempt from AWCA.

Employers electing to provide coverage under the “Oklahoma Option” were required to provide for payment of the same forms of benefits and the same standards for determining average weekly wage, death beneficiaries, and disability as AWCA. However, those employers were “not bound by any provision of the Administrative Workers’ Compensation Act defining covered injuries, medical management, dispute resolution or other process, funding, notices or penalties...”

According to the court, there is little question that employers creating their own plans were allowed to include conditions that made it more difficult for an injured worker to recover for a work-related injury than a counterpart covered by the Administrative Act. The court remanded the *Vasquez* case to the OWCC to determine whether the injury was work-related and what benefits, if any, are due under AWCA.

The state Supreme Court recognizing that other cases had been stayed pending its decision in *Vasquez* indicated that the decision applied immediately to all other similar cases “being challenged before the Commission and in the appellate pipeline, and prospectively to all future cases...”

Dillard’s and any other qualified employers covered under the “Oklahoma Option” are not deemed to have failed to secure workers’ compensation insurance, and their liability is limited to that of an employer who had complied with the provision of the traditional AWCA.

Additionally, Oklahoma opt-out employers have 90 days from the final determination to secure workers’ compensation coverage in compliance with the traditional Act. The 90-day clock will start when the high court issues a mandate to the Oklahoma Workers’ Compensation Commission.

Status of the Oklahoma Administrative Workers’ Compensation Act

The Oklahoma Administrative Workers’ Compensation Act has also faced constitutional challenges in 2016, with several provisions ruled unenforceable or unconstitutional.

Despite these recent decisions regarding the provisions in AWCA, the workers’ compensation reforms enacted in 2013 have resulted in reduced costs in the Oklahoma workers’ compensation system. Loss costs in Oklahoma have decreased 44 percent overall since 2013, and NCCI is proposing a 10.2 percent decrease effective Jan. 1, 2017.

Sedgwick continues to monitor additional pending challenges to the 2013 workers’ compensation reforms and will provide updates as those cases are decided.

In the meantime, should you have any questions about these Oklahoma decisions, please contact your Sedgwick client services representative.

