

# REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

Thursday, September 18, 2014

1:30 p.m.

Commission Chambers  
1915 N. Stiles Ave.  
Oklahoma City, Oklahoma  
www.wcc.ok.gov

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## *AGENDA*

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**CALL TO ORDER ..... Mr. Wilson, Chair**

**ROLL CALL..... Mr. Wilson, Chair**

**NOTICE OF COMPLIANCE..... Holly Miller**

### **MINUTES**

- a. The drafted Minutes of Regularly Scheduled Commission Meeting on August 21, 2014, will be considered for approval.

**BUSINESS..... Mr. Wilson, Chair**

**THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION.**

1. **Possible Executive Session for the Purpose of Confidential Communications Between the Commission and Its Attorneys Concerning Pending Litigation and Related Claims and Charges Filed With the U.S. Equal Employment Opportunity Commission**

Pursuant to 25 O.S. § 307(B)(4), an Executive Session is proposed for the purpose of conducting confidential communications between the Commission and its attorneys concerning pending lawsuits and claims against the Commission, including *Angela Sanders v. The Oklahoma Workers' Compensation Commission* and *Kartral McKnight, et al., v. The Oklahoma Workers' Compensation Commission*, and related claims and charges filed with the U.S. Equal Employment Opportunity Commission.

The Commission's counsel from the Attorney General's Office have advised that public disclosure of the communications relating to these claims and lawsuits will seriously impair the ability of the Commission and their counsel to respond to the litigation and claims.

- a. **Motion and Vote to (A) Determine That Disclosure Will Seriously Impair the Ability of the Commission to Respond to the Claims and Lawsuits, and (B) to go Into Executive Session for the Purposes Stated Above**
- b. **Vote to Reconvene in Open Session**

**Possible Action:**

No action is anticipated nor will be taken by the Commission.

2. **Commission Approval of the Distribution of Undistributed Surplus of Workers' Compensation Self-Insurance Programs**

85A O.S. §102 states the Commission shall approve the distribution of all undistributed policyholders' surplus of a Workers' Compensation Self-Insurance Program if the Program complies with the specified criteria.

Oklahoma Automobile Dealers Self-Insurance Association (OADSIA) has made a request for a partial distribution of surplus funds in the amount of \$3,100,000. The distribution will be payable in the amount of \$150,000 from fiscal year 2007-2008; \$150,000 from fiscal year 2009-2010; \$100,000 from fiscal year 2010-2011; \$500,000 from fiscal year 2011-2012; 2,200,000 from fiscal year 2012-2013.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, or approving the distribution to the Oklahoma Automobile Dealers Self-Insurance Association.

3. **Commission Approval of Group Self-Insurance Applications for New Membership**

Commission Rule 810:25-11-3 states a new membership to a self-insurance group may not become effective without Commission approval. All applications for membership are filed with the Commission. The application includes evidence of the execution of the indemnity agreement, power of attorney, and joint and several liability agreement, as required by 810:25-11-15, with signed approval of the applicant by the association, and is accompanied by a current balance sheet and income statement. The following are the applicants and the respective self-insurance group associations to which they are applying for membership:

**Oklahoma Automobile Dealers Self- Insured Association (# 75058):**

- McClain's RV Superstore OKC West, Inc. (Previously was McClain's RV Superstore)
- Bixby Auto Plaza, LLC
- Byford Le Norman Duncan BCG, LLC d/b/a Byford Chev-Bk-GMC
- Byford Le Norman CDJR, LLC d/b/a Byford Chry-Dodge-Jeep-Ram
- David Stanley, LLC
- Tommy Nix Auto Group, LLC

Lawton Automotive, LLC d/b/a Lawton Kia  
James Hodge, Inc. d/b/a James Hodge Toyota (Previously was Toyota of Muskogee)

**Oklahoma Operators Self- Insurance Fund (# 75292):**

A D R O, LLC d/b/a McDonald's Restaurants

**Oklahoma Health Care Association (# 75175):**

Cleveland Area Trust Authority  
Jeay Medical Services LLC d/b/a Epic Medical Center  
LeFlore County Hospital Authority

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, or approving some, all or none of the applications for new members to the respective associations.

**4. Commission Adoption of Employee Compensatory Time Policy**

Proposed for the Commission's consideration is the employee compensatory time policy to properly account for time worked and leave taken by employees who perform work in excess of the established 40-hour workweek, attached hereto as **Attachment A**.

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, adopting the proposed employee compensatory time policy as stated in **Attachment A**, or adopting a different employee compensatory time policy.

**5. Commission Consideration of Sponsorship of Educational Programs for Independent Medical Examiners**

Under Commission Rule 810:15-9-1, one of the requirements is that Independent Medical Examiners must attend "Commission sponsored education programs at least once every two (2) years . . ." Presented for the Commission's consideration is an additional program to the two programs previously approved by the Commission:

a) AMA Guides- Sixth Edition Training on December 5<sup>th</sup> in Oklahoma City

**Possible Action:**

Possible action may include, but is not limited to: taking no action, continuing the matter, approving or not approving the program for Commission sponsorship.

## 6. Commission Adoption of Open Records Act Fee Schedule

Section §24A.5 of the Open Records Act requires any agency establishing fees under this act to post a written schedule of the fees at its principal office and with the county clerk. Proposed for the Commission's consideration is the Schedule of Fees attached hereto as **Attachment B**.

### Possible Action:

Possible action may include, but is not limited to: taking no action, continuing the matter, adopting the proposed fee schedule as stated in **Attachment B**, or adopting a different fee schedule.

## 7. Reports

**THE FOLLOWING ARE REPORTS ARE PRESENTED FOR INFORMATIONAL PURPOSES ONLY. NO ACTION WILL BE TAKEN.**

### i. State Average Weekly Wage and Maximums

Title 85A sets the maximum compensation benefit rates based on a percentage of the State Average Weekly Wage (SAWW) reported to the Commission by the Oklahoma Employment Security Commission. Due to an INCREASE in the SAWW reported by the Oklahoma Employment Security Commission, the **MAXIMUM** compensation benefit rate for injury, illness or death has changed as follows:

For Temporary Total Disability (TTD), the maximum rate is **\$571.55** per week for work-related injury and illness occurring during the period beginning November 1, 2014 and ending October 31, 2015. *85A O.S. Supp. 2013, §45(A)*.

For Permanent Total Disability (PTD) and Death, the maximum rate is **\$816.50** per week for work-related injury, illness or death occurring during the period beginning November 1, 2014 and ending October 31, 2015. *85A O.S. Supp. 2013, §45(D) regarding PTD, and 85A O.S. Supp. 2013, §47 regarding death.*

For Permanent Partial Disability (PPD), the maximum compensation benefit rate remains unchanged at **\$323** per week for work-related injury and illness occurring on or after February 1, 2014. *See, 85A O.S. Supp. 2013, §45(C)*.

### ii. Timeline on Permanent Rulemaking

The Commission's current Emergency Rules are effective until September 15, 2015. Therefore, the Commission is in the process of drafting its permanent rules to propose to the Legislature in the next legislative session. The tentative timeline for the permanent rulemaking process is as follows:

- Notice of Rulemaking Intent Submitted-December 24, 2014

- Rule Impact Statement Issued- January 30, 2015
- Public Hearing- February 19, 2015
- Adoption of Permanent Rules- March 20, 2015
- Submission to Governor and Legislature- March 30, 2015

The Commission will be seeking the public's participation in the rulemaking process very soon. Please watch for an alert to be posted on the Commission's website which will provide an email address to send suggested revisions to the current emergency rules or suggested new rules. Receiving participation early in the process will be invaluable in ensuring the Commission develops the most effective rules for Oklahoma's workers' compensation system.

**iii. Commission Case Activity Update- Commissioner Gilliland**

A summary report will update the Commission on the Commission's case activity, including form filings, status of appeals, and the activity of the Administrative Law Judges.

**iv. NCCI Loss Costs Filing- Commissioner Engle**

A summary report will address the recently released workers' compensation loss costs released by the National Council on Compensation (NCCI). Loss costs are used by insurers to determine rates for employers.

**v. Oklahoma Workers' Compensation Educational Conference**

On September 22-23, 2014, the Commission will host the First Annual Oklahoma Workers' Compensation Educational Conference with Governor Mary Fallin to welcome and open the conference on Monday, September 22nd. The conference will be held in cooperation with the International Workers' Compensation Foundation. Sessions will take place at the Tower Hotel, 3233 N.W. Expressway, Oklahoma City, OK 73112.

The goal of the conference is to present information and updates to system practitioners and create an opportunity for dialogue on current and upcoming issues. Employers, worker representatives, medical providers and their office staff, insurance claims professionals, self-insurers, third party administrators, safety and human resource managers, claimant's and defense attorneys, and vocational rehabilitation providers are encouraged to attend. In fact, anyone interested in the workers' compensation system in Oklahoma will receive valuable information at the conference. The conference will also feature an Exhibit Hall, and presentations and workshops from experts within the Workers' Compensation Commission and the private sector.

**8. Any Matter Not Known About or Which Could Not Have Been Reasonably Foreseen Prior to Posting the Agenda**

**9. Announcements**

Commission has scheduled a Special Meeting for Friday, September 26, 2014

Commission's next regularly scheduled meeting is Thursday, October 16, 2014

**ADJOURNMENT.....Mr. Wilson, Chair**



**State of Oklahoma  
Workers' Compensation Commission  
Policies and Procedures  
Fair Labor Standards Act & Comp Time Policy**

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<b>Effective Date of Policy: 09/01/2014</b>	<b>Next Scheduled Review:</b>
<b>Prior Policy:</b>	<b>Policy Number: WCC-1</b>
<b>Last Reviewed:</b>	<b>Replaces Policy Number:</b>
<b>Date Policy Last Revised:</b>	
<b>Approved: Human Resources</b>	<b>Approval Date: 09/18/2014</b>

**Reference:** OPM Merit Rules for Employment 530:10-7-12 and 530:10-15-10 through 530:10-15-12, 29 USC 201 et. seq., (Fair Labor Standards Act) and 29 C.F.R. 541 et. seq. and 785.15-17, 19, 27-32, 34 and 36

### **Policy**

It is the policy of WORKERS' COMPENSATION COMMISSION to properly account for time worked and leave taken by THE WORKERS' COMPENSATION COMMISSION FLSA non- exempt and exempt employees who perform work in excess of the established 40-hour workweek, and to comply fully with the provisions of the Fair Labor Standard Act (FLSA).

### **Definitions**

**"Alternative work schedule"** means a forty- hour work week schedule outside the regular eight-hour day work schedule. (i.e.: four ten-hour work days).

**"Bona fide meal period"** means a rest period where the employee must be completely relieved from duty for purposes of eating regular meals. This is not considered work time and is not compensable.

**"Compensatory time"** is time given to an employee in lieu of overtime pay for hours worked in excess of the established 40-hour workweek.

**"Exempt"** means an employee who is not covered by the minimum wage and overtime provisions of FLSA.

"FLSA" means Fair Labor Standards Act.

"Non-exempt" means an employee who is covered by the minimum wage and overtime provisions of FLSA or is granted special non-exempt status.

"Overtime pay" is monetary compensation above a non-exempt employee's base pay for the hours he or she performs work in excess of the established 40-hour workweek.

"Workweek" means any fixed and regularly recurring period of 168 hours / 7 consecutive 24-hour periods.

"Workweek adjustment" is a change in an employee's regularly scheduled work hours and may be made before or after the extra work is performed and in consideration of the needs of the office, unit or facility. For example, if an employee who normally works 8 a.m. to 5 p.m. Monday through Friday has worked 40 hours by 1 p.m. Friday, the supervisor may excuse the employee from work at 1 p.m. on the Friday of the workweek.

#### Procedure

- THE WORKERS' COMPENSATION COMMISSION supervisors and employees shall make every effort to accomplish essential work within the regularly assigned workweek hours.
- THE WORKERS' COMPENSATION COMMISSION shall utilize workweek adjustments whenever possible to avoid overtime work by employees, and, where workweek adjustments are not possible, to grant employees compensatory time for overtime hours worked.
- Any overtime worked by employees must be necessary to the continued effective operations of the agency and must be managed in the most efficient and economical manner possible.
- Supervisors are responsible for scheduling a workweek adjustment as necessary to avoid overtime pay or the accrual of compensatory time.
- The supervisor may consider an employee's preference for time off in workweek adjustments. However, the first consideration must be the needs of the agency. Supervisors are expected to make a reasonable effort to provide employees advance notice of any change in assigned work hours or days.
- Employees shall not earn compensatory time and utilize leave within the same 40-hour work week.
- Compensatory time is accrued by the workweek and shall be accrued and taken in 15-minute increments.



- THE WORKERS' COMPENSATION COMMISSION shall not accept compensatory time from another state agency.

### **Non-exempt employees**

- May be required to work overtime if it is necessary to meet business and emergency operational requirements and if workweek adjustment is not possible;
- Shall not workweek adjust or work in excess of 40 hours without prior authorization from his or her supervisor. Unauthorized overtime time may subject an employee to disciplinary action.
- May be required at the discretion of the Human Resources Department to accrue compensatory time in lieu of receiving overtime pay.
- Prior to the performance of overtime work, the Appointing Authority and the employee shall agree in writing that the employee may be required to take compensatory time in lieu of overtime pay. A written agreement is not required with respect to employees hired prior to April 15, 1986, if the employer had a regular practice in effect on April 15, 1986, of granting compensatory time off in lieu of overtime pay (29 U.S.C. 553.23).
- Compensatory time and/or overtime pay is computed at the rate of one and one-half (1.5) times the regular or base hourly pay rate for each hour worked in excess of 40 hours.
- Shall use compensatory time prior to annual leave unless the employee is within 30 hours of the annual leave maximum accrual limit.
- THE WORKERS' COMPENSATION COMMISSION shall pay an employee for the balance of compensatory time earned, but not used within this 180-day period.
- THE WORKERS' COMPENSATION COMMISSION shall pay an employee for the balance of accrued compensatory time upon termination of his or her employment.
- An employee shall request and obtain prior approval of the use of compensatory time. Compensatory time cannot be used in advance of its accrual.

### **Exempt employees**

- Are not eligible for overtime pay;
- May be required to work more than 40 hours in a workweek if it is necessary to meet business and emergency operational requirements and if workweek adjustment is not possible;

- Shall not workweek adjust or work in excess of 40 hours without prior authorization from his or her supervisor. Unauthorized overtime time may subject an employee to disciplinary action.
- Are eligible for accrual of compensatory time when work is performed in excess of 40-hours in a workweek. Compensatory time is accrued at one (1) hour of compensatory time for each hour worked in excess of 40 hours or the standard workweek.
- FLSA exempt employees on the regular compensatory time program (comprog) may accrue up to 120 hours of compensatory time and have up to 180 days to use this time. Compensatory time that is not used within 180 days following accrual will expire and will be removed from timekeeping records.
- An employee shall request and obtain prior approval of the use of compensatory time. Compensatory time cannot be used in advance of its accrual.
- FLSA exempt employees may designate whether they would prefer to use accrued compensatory time or annual leave for scheduled absences.
- THE WORKERS' COMPENSATION COMMISSION shall not pay an FLSA exempt employee who is separating or has separated from employment for the balance of unused compensatory time, unless extenuation circumstances are present (i.e. the employee's position is one in which the demand prevents the employee from utilizing the accrued compensatory time or a prevailing market condition exists in a profession that an employee should be paid such compensatory time upon separation or if cannot be used prior to its expiration).

#### **Recordkeeping and Reporting**

- All employees shall record in self-service on a weekly basis. Failure to input time may result in a delay of compensation. Falsifying the timesheet may result in disciplinary action up to and including termination.
- All Employees shall document in the self-service system the business reason for the comp time earned.
- The supervisor shall review and approve each employee's time. The supervisor's approval validates the time sheet of work performed by the employee. Falsifying the time sheet may result in disciplinary action up to and including termination.
- Employees shall be required to use leave for the tardiness or may request approval from supervisor for workweek adjustment.
- Employees shall document work performed by rounding to the nearest quarter hour. Employees may be disciplined for excessive tardiness.

#### **Bona fide Meal Periods and Break Times**

### **ATTACHMENT A**

- THE WORKERS' COMPENSATION COMMISSION shall provide non-exempt employees an uninterrupted meal period of at least 30 minutes. To ensure meal periods are uninterrupted employees are encouraged not to eat at their work stations during this time.
- Breaks or short rest periods lasting 15 minutes or less are counted as time worked. THE WORKERS' COMPENSATION COMMISSION may eliminate breaks as necessary due to staffing or work needs.
- Any exception to the bona fide meal period for non-exempt employees shall require authorization by the HR Department. The exception shall provide justification based on business necessity, consistent application, and comply with the FLSA.
- Any exception to this policy must be authorized in advance by the Human Resources Department.

Troy L. Wilson  
Chairman

Robert H. Gilliland  
Commissioner



Denise Engle  
Commissioner

Dr. Rick Farmer  
Executive Director

STATE OF OKLAHOMA

**WORKERS' COMPENSATION COMMISSION**

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