With SB 767, Oklahoma Opt Out Gets a Wee Bit Darker

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The Oklahoma State Legislature last week passed and sent to the Governor SB 767, a bill otherwise known as the “comp cleanup bill”. Overall it is a rather unremarkable piece of legislation, correcting what some had felt were oversights from the states previous reform efforts. One of the more substantial “corrections” was the removal of sanitarium limitations on infectious diseases. Infectious disease is back to previous law, if contraction "arises out of employment."

There were, however, a couple changes that Opt Out supporters in Oklahoma will enjoy, even if they lend to lessened perceptions regarding the industry’s openness and overall fairness. One was the removal of the requirement that Opt Out companies maintain the same Statute of Limitations for claims reporting that companies under workers’ comp must honor. That move will (temporarily at least) solidify the extremely tight reporting windows that most Opt Out companies have adopted.

There will likely be continuing legal challenges to the “24 hour” or “end of shift” reporting requirements these companies generally maintain. In the case Heimeshoff vs. Hartford Life and Accident Insurance Company, the United States Supreme Court determined that ERISA time limits for claiming benefits are enforceable unless “unreasonably short.” Now the courts will have ample opportunity to define what “unreasonably short” is.

Until such time, employees of Opt Out employers can be denied all benefits if they fail to perform the simplest of perfunctory procedures within that predetermined time frame.

The biggest change from SB 767, however, was the complete exemption of all Opt Out application information from public records requirements. Any information used or provided by a company to apply for and qualify as an Opt Out participant will now be strictly confidential and kept away from public eyes. While any approved plan will still be accessible, all of the information provided to establish that plan will remain secret.

Apparently Oklahoma does not have any enquiring minds. So, why does this matter?

For one, it is another degree added to an already uneven playing field. Self-Insured employers in the state do not have the benefit of confidentiality. In Oklahoma those self insured employers must present financial information to the Commission to prove they are able to pay claims. Insurance companies as well are closely monitored to make certain reserves are sufficient to cover losses. The financial information submitted in a self-insurance application is public record and the Commission takes a public vote to allow the company to self-insure and require an adequate bond.

Anything an Opt Out Employer now files with the Insurance Commissioner is going to be kept secret from the public unless there is litigation concerning a particular plan. With the Opt Out application records kept in the dark, the financial responsibility of the Opt Out applicant remains a mystery. While that information is discoverable once a claim arises and litigation ensues, it may be too late; the ability to pay the cost of a serious injury may not be there.

I suppose it is just one more thing we’ll need to take the Opt Out crowd’s word for.

Everything about the important public policy of reasonably providing for injured workers should be transparent. Otherwise, workers, their families, and ultimately the taxpayers, will suffer. Closing the public window on the Opt Out application process is simply another room darkening curtain in an already less than transparent gallery.

To that end, Oklahoma’s SB 767 makes Opt Out grow just a wee bit darker.
Robert Wilson is President & CEO of WorkersCompensation.com, and "From Bob's Cluttered Desk" comes his (often incoherent) thoughts, ramblings, observations and rants - often on workers' comp or employment issues, but occasionally not.

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