The Oklahoma Option
Legislation Would Allow Employers to Opt Out of Workers’ Compensation

March 2013 • Lockton Companies

For decades, the option for employers to opt out of Texas workers’ compensation has been of considerable influence in businesses locating to Texas. It has saved billions in insurance premiums and claims costs for employers who have become nonsubscribers to workers’ compensation. Responsible Oklahoma employers and legislators, feeling the pressure for job creation and managing the exceptional expense created by Oklahoma’s workers’ compensation system, have been aggressively working to create a similar opportunity in their state. The Oklahoma Option for employers to opt out of workers’ compensation is currently before the 2013 Oklahoma Legislature (Committee Substitute for Senate Bill 1062, filed on February 18, 2013).

However, this legislation is not just about Oklahoma. While the bill(s) to be introduced or presently before the legislature significantly differ from Texas,’ the ultimate legislation is still expected to reduce employers’ workers’ compensation costs by 50 percent and is being looked upon as a possible new model for the nation. Should Oklahoma be successful, there are many who believe it may just be that catalyst for momentum to redesign workers’ compensation on a state-by-state basis. Much rides on the results of the 2013 Oklahoma Legislature.

While the momentum this year is quite favorable to pass this legislation, there are substantial headwinds awaiting its arrival. Those headwinds will be in the form of litigation to overturn the law.
Impact on Lockton Clients

While the law may pass in this calendar year, it is doubtful we will see any resolution to the legal challenge(s) until some time in 2014 or even later. No preparatory activity is recommended at this time.

Following is a brief summation of selected content, with Lockton commentary, of a most thorough analysis of this legislation by Bill Minick, JD, LLM, President, PartnerSource, Dallas, Texas, in his recently published book “The Oklahoma Option—Free Market Competition for the Benefit of Injured Workers and Employers.” Contents of Minick’s book are presented here with permission from PartnerSource. The full contents of this publication may be found at www.partnersource.com.

THE OKLAHOMA OPTION

2013 Bill, Committee Substitute for Senate Bill 1062

Background

- Oklahoma had the 5th highest workers’ compensation claims costs out of 47 states surveyed (2011 NCCI Report).

- Oklahoma had the 6th highest workers’ compensation premiums in the country (2012 Oregon WC Rate Ranking Study).

- Oklahoma ranks 47th worst out of 50 states on workers’ compensation costs (American Legislative Exchange—Laffer State Economic Competitiveness Index, 2012).

- Oklahoma receives a “D” grade for effectiveness of workers’ compensation system (Work Loss Data Institute).

- Compared to its neighboring states of Arkansas and Texas:
  - Oklahoma’s average lost-time claim frequency is 200+ percent higher.
  - Oklahoma’s permanent partial claim frequency is 200+ percent higher.
  - Oklahoma’s permanent partial indemnity average cost per case is 200+ percent higher.
  - Oklahoma’s average indemnity claim costs are 200+ percent higher.
The Second Time Around With the Oklahoma Legislature

There is again in 2013 aggressive movement to pass opt-out legislation by the Oklahoma Legislature. This legislation is coined “The Option” or just “Option,” and there are measurable differences from the 2012 first attempt at legislation, namely:

- All employers, regardless of size or claims history, may now elect the Option.
- Employee injury benefits will be exactly the same as under workers’ compensation as respects benefits and dollar, percentage and duration limits (per those contained in a newly reformed Oklahoma Workers’ Compensation Act to be concurrently considered in this Omnibus bill).
- Employers desiring to self-insure must meet stiff financial security requirements.
- Guarantee Fund Protection has been added.

Program Components

- Employers must comply with OSHA regulations.
- Employers must provide an injury benefit plan.
- Employers must engage in specific employee communications as to their plans’ benefits.
- Employers must purchase insurance or, for large employers, self-insurance is an option combined with the option to purchase excess coverage.
- Employee injury claims must be managed in accordance with specific rules.
- There will be dispute resolution processes.
Texas Nonsubscription Versus Oklahoma Option

There are many provisions within the Oklahoma Option that are similar to Texas Nonsubscription, including employee accountability, employer direction of care, dispute resolution procedures, and more. There are, however, some elements that are quite distinctive from Texas and these variations are driven by the differences in litigation cultures of the two states with Oklahoma having a more liberal judiciary.

These key differences are:

- Mandatory benefit protection for all employees and those benefits at least equal to workers’ compensation (Texas has no benefit mandate).

- Mandatory insurance coverage or bonding (employer must carry at least $2 million of coverage per occurrence or provide a surety bond or satisfy other financial security requirements acceptable to the state insurance department).

- Employers authorized to pool into an association program or other purchasing group.

- Guaranty fund protection.

- Substantially more limited liability protection for employers. Employers will only be subject to litigation for claims of intentional tort. Otherwise, they are protected by an exclusive remedy as exists under workers’ compensation (Texas has unlimited negligence liability).

- More state regulatory oversight.

- No limit to medical benefits.

While each of the above areas are significant, the most impactful is the elimination of downside financial loss from liability litigation in return for guaranteed minimum benefit protection for injured workers. Even with these higher benefit provisions, PartnerSource believes the cost of Oklahoma workers’ compensation claims may still be reduced by 50 percent.
### Comparison of Oklahoma Option and Texas Nonsubscription Benefits

<table>
<thead>
<tr>
<th>Types of Covered Injuries</th>
<th>Oklahoma Option Minimum Benefit</th>
<th>Typical Texas Nonsubscriber Insured Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Injury by Accident, Occupational Disease, and</td>
<td>Injury by Accident, Occupational Disease, and Cumulative Trauma</td>
<td>Injury by Accident, Occupational Disease, and Cumulative Trauma</td>
</tr>
<tr>
<td>Cumulative Trauma</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Benefits</td>
<td>100% of covered charges; no dollar or week duration limits</td>
<td>100% of covered charges; for up to 104 weeks</td>
</tr>
<tr>
<td>Vocational Rehabilitation</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>Temporary Disability Benefits</td>
<td>70% of employee’s average weekly wage, $540 per week maximum, starting 4th day of disability, for up to 104 weeks</td>
<td>70% of employee’s average weekly wage, $600 per week maximum, starting 8th day of disability, up to 104 weeks</td>
</tr>
<tr>
<td>Permanent Partial Disability (aka “Impairment Income” or “Dismemberment”) Benefits</td>
<td>70% of employee’s average weekly wage (up to $250) for number of weeks such disability (determined under AMA Impairment Guides) bears to 450 weeks; with scheduled members</td>
<td>Dismemberment benefits for scheduled members only; paid as a percentage of $150,000 (depending upon severity of loss); no awards based on percentage of impairment</td>
</tr>
<tr>
<td>Permanent total Disability Benefits</td>
<td>450 times the lesser of 70% of employee's average weekly wage or the state average weekly wage</td>
<td>None</td>
</tr>
<tr>
<td>Disfigurement Awards</td>
<td>Up to $50,000</td>
<td>None</td>
</tr>
<tr>
<td>Death Benefit</td>
<td>For surviving spouse, lump sum payment of $100,000; plus 70% of the lesser of deceased employee’s average weekly wage and state average weekly wage; additional benefits for surviving children; up to $10,000 funeral expenses</td>
<td>Lesser of 7.5 times annualized pay or $150,000 (for surviving spouse or minor children)</td>
</tr>
<tr>
<td>Maximum Benefit Limit</td>
<td>None</td>
<td>$250,000 per employee</td>
</tr>
</tbody>
</table>

### Insurance Offerings

It is expected there will be considerable competition among insurance carriers to provide low deductible policies compliant with the statutory Option requirements.

### For More Information

For a more detailed discussion as to the current Oklahoma legislation, please visit www.partnersource.com. *Risk & Insurance* is also publishing a series of articles by Bill Minick on the Oklahoma Option.
Our Mission

To be the worldwide value and service leader in insurance brokerage, employee benefits, and risk management

Our Goal

To be the best place to do business and to work