

The 24 Hour Oklahoma Opt Out Sham

By [Robert Wilson](#) 04/29/2015 17:21:00

I wrote earlier this week about a fall I took in front of my hotel while attending the 2015 RIMS Conference in New Orleans. Fortunately I do not believe I sustained any significant injury in that fall, and as indicated wouldn't file a claim anyway. Nevertheless, the knowledge that protections are available to me should I discover in a few days that something more significant is wrong is comforting.

Good thing my company is not an Oklahoma Opt Out operation. If that discovery came 24 hours after the accident, I'd be screwed. Just ask Rachel Jenkins.

Ms. Jenkins, a 32-year-old single mother of four children was working a double shift at a center to care for the disabled in northwest Oklahoma City on March 31, 2015. The center is owned by ResCare, Inc., the nation's largest privately-owned home health care agency.

She was injured when she tried to break up an assault of her disabled client by another client, getting thrown to the floor in the process. This happened in full view of her supervisor. She went to the emergency room that night after her shift, where she was given medication and sent home to rest. Her employer sent her to a company doctor the next day. He provided medication and ordered physical therapy. Despite an early interventional response, her claim and resultant benefits were denied 8 days later.

The reason? She had not called a designated toll free number to report the accident within 24 hours of the incident. She didn't make that call until the 27th hour, while she was at the company doctors office.

What a careless person. Clearly she is not deserving of any coverage. The state should probably take her children as well.

Jenkins did not know there was a problem until 8 days later when she received a letter from ResCare's Opt Out benefit plan in Texas. The letter denied "all medical and disability benefits" because Jenkins had violated the Opt Out plan's provision that an injury must be reported to a toll-free number in Texas within 24 hours or benefits would be barred. Jenkins was asleep when the 24 hours ran, and did not call the toll free number until she was at the company doctor's office 27 hours after the accident.

Glad those Opt Out employers are taking such stellar care of their employees.

Proponents of Opt Out will tell you they are offering better benefits and superior care over traditional workers' comp. They tell you Opt Out is as good a deal for employees as it is for employers. For all I know they have also brokered world peace and found a cure for the common cold. Stories such as this, however, tell a different tale. The argument stating that Opt Out employers only care for the welfare of their workers is severely undermined by restrictions of this type.

Does ResCare care about an employee who was denied all protections over a 3 hour notice lapse for an otherwise unquestionable claim for which they had already directed care? I'll let you decide that for yourself.

According to Bob Burke, an Oklahoma attorney who has aggressively fought the Oklahoma reforms that allowed Opt Out, "the Insurance Commissioner approved the ResCare Opt Out plan with the restrictive 24-hour statute of limitations even though state law requires an Opt Out plan to have the same statute of limitations as the regular workers' compensation law which gives at least one year to file a claim before the Workers' Compensation Commission." Burke also says, "ResCare is not alone. Every Opt Out plan I have seen has no more than a 24-hour statute of limitations. The Insurance Commissioner has argued before that the plan has only a 24-hour "notice" restriction. However, since all benefits are barred if the notice restriction is violated, it is indeed a statute of limitations, defined by the law as a time set in which to file a claim or the

claim is barred by law."

Personally, I think it is ridiculous. The company should have been considered notified when it sent her to the damn doctor. This is nothing but a cheap technicality; a bureaucratic shuffle eerily reminiscent of the bloated processes Opt Out employers claim they were trying to leave behind in the first place. It certainly brings to question the altruistic motives they extend as a reason for Opting Out to begin with; the "better care for our employees" argument gets flushed down the toilet by these types of draconian restrictions.

I hope you folks in Tennessee are paying attention. This circus is coming to your town next.

Burke filed a lawsuit this morning in the District Court of Oklahoma County against the Oklahoma Insurance Commissioner on behalf of Rachel Jenkins. The lawsuit, CV-2015-784, asks that the Insurance Commissioner be enjoined from approving further Opt Out plans until the constitutionality of the Oklahoma Injury Benefit Act is decided by the Supreme Court when a fully adjudicated case arrives at the high court.

The lawsuit asks three things:

1. That the Court declare that the Insurance Commissioner is violating his statutory duty to approve only Opt Out plans that have the same statute of limitations as regular workers' compensation employers.
2. That the Court find the entire Opt Out scheme, the Oklahoma Injury Benefit Act, unconstitutional as a denial of Jenkins' constitutional guarantees of equal protection and due process. Also, that the Act is unconstitutional because it is a special law that treats workers differently, depending on whether they work for an Opt Out or non-Opt Out company. Such different treatment is prohibited by the state constitution.
3. That the Court enjoin the Insurance Commissioner from approving additional Opt Out plans until the Supreme Court rules on the constitutionality of the Oklahoma Injury Benefit Act. To date, about 40 companies have dropped their workers' compensation insurance policy and Opted Out with their own plan for benefits.

The workers' compensation industry is by no means perfect. Employers want to escape what for them is a bloated, expensive and inflexible system. I get that, and have urged changes within our industry to correct those concerns. But, that not withstanding, if you are going to stand on principle when you leave workers' comp, you damn well better follow those principles when you create a so called responsible alternative.

Otherwise your entire motive will be revealed as nothing but a hypocritical sham.

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Bob has a couple unique personality characteristics. He firmly believes that everyone has the right to his (Bob's) opinion, and while he may not always be right, he is never in doubt. Enter at your own risk, and like all of our blog areas, we encourage you to read the disclaimer at the bottom of the page.

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Bob is an accomplished speaker for the workers' compensation industry. He is available for conferences, corporate events, children's birthday parties and Bar Mitzvahs. You may

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