



*What Employees
Need to Know
About Filing an
Insolvency Petition*

FLORIDA
DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

**DIVISION OF
WORKERS' COMPENSATION**

Revised September 1998

Insolvency Petitions

INTRODUCTION

The 1977 amendments to the Workers' Compensation Law provided an injured employee (claimant) pursuing an appeal of an order of a Judge of Compensation Claims with the right to file a petition for relief from the cost of preparing the record on appeal. The petition is often referred to as an "insolvency petition" or a "verified petition."

An insolvency petition can be granted only if a Judge of Compensation Claims finds the claimant insolvent as defined under the Workers' Compensation Law. In the event that an insolvency petition is granted, the Judge of Compensation Claims may order the cost of preparing the record on appeal to be paid, in whole or in part, by the Workers' Compensation Administration Trust Fund. (the Fund).

When filing a petition, a claimant must comply with certain requirements and procedures which are set forth in Sections 440.02(31)(b) and 440.25(5)(b), Florida Statutes, Rule 9.180(g) Florida Rules of Appellate Procedure and Rule 38F-68, Florida Administrative Code.

Although this brochure serves to answer some of the basic questions that may occur when filing an insolvency petition, it does not illustrate all of the procedures or requirements necessary to file an insolvency petition. Furthermore, this brochure is not meant to constitute or be a substitute for legal advice on this topic.

For legal advice concerning your rights under the Workers' Compensation Law, you should seek the services of a qualified attorney.

This pamphlet is for informational purposes only, and does not constitute or have the effect of law, rules or regulations.



Questions and Answers

Q. What does insolvency or insolvent mean under the Workers' Compensation Law?

A. Before your insolvency petition can be granted or denied, a Judge of Compensation Claims must first determine whether you are insolvent under the Workers' Compensation Law. As defined in Section 440.02(31)(b), Florida Statutes, a claimant is insolvent when he:

1. has ceased to pay his debts in the ordinary course of business and cannot pay his debts as they become due; or
2. has been adjudicated insolvent pursuant to the Federal Bankruptcy Law.

Q. How does an insolvency petition differ from a verified petition of indigency?

A. An insolvency petition requests relief from payment of the cost of preparing the record on appeal; if granted the record costs are paid by the Workers' Compensation Administration Trust Fund. An indigency petition requests relief from payment of the fee required for filing an appeal; if granted the filing fee is waived. Separate and distinct petitions are required to be filed for these two types of relief.

Q. How do I determine what it will cost to prepare the record on appeal?

A. Within five days after the contents of the record have been determined, the Judge of Compensation Claims will notify you, or your attorney if you are represented, of the estimated cost of preparing the record on appeal. Within 15 days after the notice of the estimated cost is served, you must either deposit a sum of money equal to the estimated cost with the Judge or file an insolvency petition with the Judge.

An insolvency petition filed prior to the date of service of the notice of estimated costs shall be deemed untimely or prematurely filed and may be grounds for a Judge of Compensation Claims to deny your petition with prejudice.

Q, What are the contents of an insolvency petition?

A, The insolvency petition consists of the petition and a separate financial affidavit. The petition must contain a sworn statement that you are insolvent. The financial affidavit is a sworn statement of your assets, liabilities and income. It must be complete and detailed. Failure to state all assets and income is grounds for a Judge of Compensation Claims to deny your petition with prejudice.

The Division of Workers' Compensation (Division), by rule, has promulgated a form of financial affidavit for use in insolvency petitions; it has been designated as LES Form AFSU-10. You must use this form or a form that substantially conforms to it. If you are represented by an attorney, your attorney may have this form. Forms are also available from your local Judge of Compensation Claims' office or from the Division of Workers' Compensation.

The petition must also contain a statement by you, or your attorney if you are represented, that in your or your attorney's opinion the notice of appeal was filed in good faith and that there is a probable basis for the District Court of Appeal to find reversible error. The petition must also state with particularity the specific legal and factual grounds for your or your attorney's opinion.

Q, With whom should an insolvency petition be filed?

A, Your insolvency petition (and financial affidavit) must be filed with the Judge of Compensation Claims, with copies served on the Division of Workers' Compensation (in Tallahassee), the Office of the General Counsel of the Department of Labor and Employment Security (in Tallahassee), the Clerk of the District Court of Appeal (First District) and all parties (usually the employer/carrier).



Q. What happens after the insolvency petition is filed?

A. The Judge of Compensation Claims will promptly conduct a hearing giving at least 15 days' notice to you, the Division, the General Counsel's Office and any other interested parties. The Division, the General Counsel's Office and the other interested parties will review the insolvency petition, and may file an objection to it. However, if no objections are filed within 20 days from the date the insolvency petition was served, the Judge of Compensation Claims may enter an order on the petition without a hearing.

If a hearing is held, the Judge of Compensation Claims generally hears argument on the objections, takes testimony, and considers other relevant evidence. The Judge generally issues an order addressing the relief requested in the petition and any objections made to the petition. The Judge may render a decision at the conclusion of the hearing or at a later date.

Q. Why would an objection be filed to my insolvency petition?

A. The most common objections involve assertions that the insolvency petition does not establish that the claimant is insolvent under the Workers' Compensation Law, and that the insolvency petition does not meet one or more of the other requirements set out by statute or rule.

Q. What happens if the Judge of Compensation Claims grants my insolvency petition?

A. The Judge of Compensation Claims may order the Workers' Compensation Administration Trust Fund to pay the cost of preparing the record on appeal. The Judge could order the Fund to pay all or part of the cost. In cases where the Fund is ordered to pay only part of the cost, the Judge may require you to pay the remainder of the cost.



The Judge will order the record transcribed by an authorized court reporter who will bill the Division for the Fund's share of the cost. Where applicable, the Judge may order you to post your share of the cost with the Judge's office or the court reporter.

Q. What happens if the Judge of Compensation Claims denies my insolvency petition?

Q. You will be responsible for paying the cost of preparing the record if you decide to proceed with your appeal. Additionally, the Division can ask the Judge of Compensation Claims to require you to pay the costs incurred by the Division in opposing your insolvency petition.

Q. What happens if I prevail on appeal?

A. If the Workers' Compensation Administration Trust Fund paid for the cost of preparing the record, whether in whole or in part, the appellee (usually the employer/carrier) must reimburse the Fund for the costs paid by the Fund.

Q. What happens if I settle before the appeal is decided?

A. It is the appellee's responsibility to ensure that the settlement agreement provides for reimbursement to the Workers' Compensation Administration Trust Fund of costs paid by the Fund for preparing the record on appeal. Failure to so provide for reimbursement to the Fund could result in the appellee being held solely responsible for reimbursement.

Q. Who can I contact for more information about filing an insolvency petition?

A. For general information, you may call the Division's Insolvency Section at the number listed below or the JCC office in your area. However, for legal advice, you should contact a qualified attorney.

Division of Workers' Compensation

Bureau of Operations Support
2728 Centerview Drive
302 Forrest Building
Tallahassee, Florida 32399-0682
Phone 850/488-0667
FAX 850/921-8232



JUDGE OF COMPENSATION CLAIMS

| District | Phone No. |
|-----------------------------------|----------------|
| A - East - Tallahassee | (850) 488-2110 |
| A - West - Pensacola | (850) 595-6310 |
| A - Central - Panama City | (850) 872-7774 |
| B - Gainesville | (352) 955-2244 |
| C - Jacksonville | (904) 348-2790 |
| D - Tampa | (813) 272-2380 |
| E - St. Petersburg | (813) 893-2321 |
| F - Lakeland | (941) 648-3150 |
| G - Daytona Beach | (904) 254-3734 |
| H - Orlando | (407) 245-0844 |
| I - South - West Palm Beach | (561) 640-2822 |
| I - North - Ft. Pierce | (561) 468-4008 |
| J - Ft. Lauderdale | (954) 467-4606 |
| K - Miami | (305) 377-5413 |
| L - Satellite Beach | (407) 984-4866 |
| M - South- Ft. Myers | (941) 338-2459 |
| M - North - Sarasota | (941) 753-0900 |