

Workers' Compensation Legislative & Regulatory Update

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*Volume 10, Issue 3
February 20, 2009*

The regular session of the Florida Legislature begins in approximately two weeks. Apparently, the main thrust for legislative consideration this year relates to the issue of attorney fees and the impact of attorney fees as a cost driver in the workers' compensation system. However, numerous other bills relating to workers' compensation issues have been filed. Meanwhile, a 6.4% rate increase was approved by the Insurance Commissioner effective April 1, 2009. From an administrative standpoint, the Division of Workers' Compensation is proposing significant changes to rules related to self insureds, rules that certainly will have an impact on doing business in Florida as a self-insured. Also, the Florida Office of Insurance Regulation is considering changing the threshold for payroll physical audits.

Legislative Action

The opening day of the regular legislative session is March 3, 2009. The last day of the regular session is May 1, 2009. March 3, 2009 at noon is the last time that bills can be filed for introduction into the legislative process.

The issue before the Legislature concerning fees payable to attorneys representing injured workers primarily re-

lates to responding to the recent decision of the Florida Supreme Court in the case of Emma Murray v. Mariner Health and ACE USA (Emma Murray). House Bill 903 filed by Representative Flores on February 16, 2009 limits claimants' attorneys' fees to the statutory sliding scale based on benefits obtained for the injured worker by an attorney without considering other factors as was allowed for in the Emma Murray decision, including the time spent in the prosecution of a claim by the attorney. House Bill 311 having the same general effect was withdrawn prior to being assigned to any committees. An informational session on the general issues of attorneys' fee was held by the Senate Committee on Banking and Insurance on February 3, 2009, the committee in the Senate which would ultimately consider formal legislation relating to such issue. No specific bill was considered. Rather, the meeting was held for general educational purposes. Testimony was received from several selected persons including a representative from NCCI, Judges of Compensation Claims, and Office of Insurance Regulation. No substantive issues were resolved.

While most of the attention in the legislative process relates to the issue of attorneys' fees, other bills have been filed relating to workers' compensation.

Senate Bill 1820 sponsored by Senator Fasano concerns amendments to

Section 625.091, Florida Statutes, and in particular large deductible workers' compensation insurance policies. Under this proposed statutory change, collateral must be obtained on these types of policies equal to or in excess of all losses, including case reserves and incurred reserves within the deductible amount of such large deductible policies. A large deductible policy is a policy having a deductible equal to or greater than \$100,000.

House Bill 117 sponsored by Representative Schwartz provides for the creation of the Uniform Emergency Volunteer Health Practitioners Act. Volunteer health practitioners providing services in a declared emergency situation would be considered employees of the state of Florida for purposes of receiving workers' compensation if injured or killed in the performance of such services. Such employment relationship would exist unless the volunteer would otherwise be eligible for such benefits under the laws of this state or another state.

House Bill 845 sponsored by Representative Drake and Senate Bill 1138 sponsored by Senator Gaetz would amend Section 624.4626, Florida Statutes, and would allow for electric cooperatives to operate as self-insured funds for the purpose of pooling and spreading liabilities of its group members and securing the payment of benefits under Chapter 440, Florida Statutes, the workers' compensation law. Each member

within the fund would be jointly and severally liable for the obligations of the fund. Organizational requirements for such pooling arrangements would be required.

Senate Bill 1878 sponsored by Senator Lynn and House Bill 1029 sponsored by Representative Gibson relate to public employer workplace safety. Under proposed amendments, all public employers would be required to collect and retain injury and illness data as incidents occur using the OSHA Form 300, Log of Work-Related Injuries and Illnesses. Such information would be filed with the Division of Workers' Compensation and made available on the department's website. Such data would be required to be a part of the annual department report submitted in accordance with Section 440.59, Florida Statutes. This amendment would add a new Section 440.1026, Florida Statutes.

House Bill 923 sponsored by Representative Evers and Senate Bill 1654 sponsored by Senator Altman relate to requiring applicants for building permits to submit certain information to local building officials concerning the use of hoisting equipment utilized in construction, demolition or excavation work. The bill would also require certain safety standards in the use of such equipment.

Senate Bill 1422 sponsored by Senator Baker relates to owners of property acting as their own general contractor (owner-builder). Amendments to Section 489.103, Florida Statutes, would require a disclosure statement signed by owner-builders that, should an unlicensed person be used, such unlicensed person must be supervised and employed by the owner-builder which would require the provision of workers' compensation by the owner-builder. If an owner-builder permit is obtained and a licensed contractor is used, the owner-builder would be responsible for verifying that such contractor has the required workers' compensation insurance coverage.

Senate Bill 1918 sponsored by Senator Richter expresses the Legislature's

intent to revise laws relating to workers' compensation.

Rate Increase

As reported in the last newsletter, an order dated January 26, 2009 was entered by Insurance Commissioner Kevin McCarty disapproving an NCCI requested one-year 8.9% increase in the overall workers' compensation rate levels effective March 1, 2009 on new, renewal, and outstanding policies. The order indicated that although the rate filing was disapproved, a rate filing requesting a 6.4% increase for new and renewal policies effective April 1, 2009 would be approved. The order indicated that there would be no changes in rates for outstanding policies. On February 2, 2009, NCCI submitted an amended rate filing in accordance with the January 26, 2009 order. On February 9, 2009, an order was entered by the Insurance Commissioner approving this amended rate filing. An approval circular with further instructions and Florida Rate Pages attached is available online at www.ncci.com.

Self Insurers

As mentioned in the prior newsletter, the Division of Workers' Compensation is proposing a complete rewrite of rules relating to self insurers in the state of Florida. Proposed changes in the rules include: 1) increasing the minimum net worth requirement to qualify as a self insurer; 2) establishing new guidelines to be used in determining the financial strength of current and former self insurers; 3) security deposits for current and former self insurers to be based on the entity's long-term issuer credit primarily tied to investment grade quality or equivalent ratings; 4) creating penalties for self insurers who are late in filing required reports or fail to file them; fail to maintain loss records; and misclassify losses or other data which impacts the calculation of assessment; 5) changes the requirements for specific excess insurance regarding the

maximum retention amount allowed without Division approval; 6) provides for an electronic version of Form DFS-F2-SI-17 Unit Statistical Report; 7) eliminates the alternative method of application to self insure. A workshop was held on the new rules on February 16, 2008 and it is expected that a formal rule filing will be made within the near future. Self insurers should realize the potential for a significant cost increase to retain self-insurer status or qualify as a self insurer in the first instance.

Audits

NCCI initiated a filing to amend the Florida State Special Audit Rules to raise the threshold for employer physical audits of employers for workers' compensation purposes. According to these proposed rule provisions, if the estimated annual premium for an employer is \$10,000 or more, a final physical audit must be completed annually on all risks. If the estimated annual premium is less than this amount, the annual audit can be completed by mail or by a physical audit. For all new business policies having construction classifications, a final physical audit must be completed annually, regardless of the estimated premium. For all renewal business having construction classifications, a final physical audit must be conducted annually if the estimated annual premium is \$5,000 and over. The Office of Insurance Regulation has indicated that Florida Administrative Code revisions are needed to effectuate these changes and requested NCCI to withdraw the filing until an amendatory rule becomes effective, following which the proposed revision could be refilled. NCCI agreed. It is expected that the OIR will finalize the rulemaking process within the near future.