

Workers' Compensation Legislative & Regulatory Update

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*Volume 10, Issue 6
April 22, 2009*

While workers' compensation and safety legislation are being considered on several fronts in this year's legislative session, the main debate centers on attempts at limiting claimant's attorney fees in response to the Supreme Court decision in the case of Emma Murray v. Mariner Health (Emma Murray). The Senate and the House are on different tracks in responding to the Emma Murray decision, the Senate version creating even more rate increases in the offing according to NCCI. Other workers' compensation bills are being considered with varying levels of attention. Meanwhile, from an administrative standpoint, an additional workshop was held on the proposed Workers' Compensation Insurers' Standards and Practices, Rule 69L-24, FAC, and the adoption of new forms for filing with the Division of Workers' Compensation.

Legislative Activity

House Bill 903 passed the House, the substance of which reverses the effects of the Emma Murray decision by mandating that attorney fees payable to injured worker's attorneys are restricted to a percentage of recovery of benefits

accruing to the worker because of the attorney's intervention in his workers' compensation case. Basically, hourly rates for the determination of fees would be eliminated. NCCI estimates that if this bill is substantially passed by both houses of the legislature and becomes law, the adverse rate increases caused by the Emma Murray decision (an 18.6% increase in rates over a two-year period) would be reversed. NCCI would file to roll back the first year rate impact approved by the Office of Insurance Regulation (plus 6.4% effective 4/1/09) to the effective date of the bill. The bill is currently in messages in the Senate.

Meanwhile, in the Senate, there is a far different scenario evolving. According to preliminary evaluations by NCCI, the Senate version of the response to the Emma Murray case will create even greater rate increases than the Supreme Court created by rendering the Emma Murray decision. Under the Senate proposal (Senate Bill 2072), attorney's fees in lump sum settlements based upon the agreement between the injured worker and his attorney could increase from the current average 15% to a 40% fee paid by the injured worker. In other litigated cases, claimant's attorney's fees would be paid the greater of a higher sliding scale (25% for the first \$5000 in benefits being paid to the injured worker, 20% for the next \$5000, and 15% for benefits thereafter) than the current law (25/15/10/5) or the

amount that was paid to the defense attorney if it is determined that the employer/carrier engaged in a bad faith denial of benefits, unreasonably delayed furnishing benefits that were due and owing or unreasonably continued or increased the expense of litigation. In First Responder cases, hourly fees could be awarded in cases involving exposure to a toxic substance or occupational diseases. If the Senate version is passed, NCCI proposes to file a second rate increase on top of the 6.4% approved by the Office of Insurance Regulation effective 4/1/09. The next step for this bill is the Senate floor.

Other workers' compensation bills, not as hotly contested as those related to attorney's fees, are also being considered by both houses of the legislature. House Bill 1191 and Senate Bill 2406 relate to law enforcement and correctional officers with heart and hypertension claims. In certain situations, these medical conditions are presumed to be work related. Under these bills, the presumption would be lost if the employee "materially departed from prescribed treatment" for these conditions. Although both bills were assigned to various committees, no action in the form of voting has taken place.

Various safety bills including Senate Bill 2486 (fire safety), House Bill 1297 (general building safety), Senate Bill 1654 (general hoisting equipment),

House Bill 923 (general hoisting equipment), House Bill 117 (general emergency management), Senate Bill 476 (general emergency management), Senate Bill 1878 (general workplace safety), and Senate Bill 1422 (general construction) have been assigned to various committees but no action taken.

The only safety bill which has been taken up in various committees is House Bill 1029 that relates to general workplace safety for public employees. This bill was as a result of a special study commission established in 2008 related to public employee workplace safety. Several committees within the House have favorably considered the bill and it is now in the Insurance, Business, and Financial Affairs Policy Committee. This bill basically requires all public employees to comply with certain Federal OSHA standards by a certain date. It also requires the submission of certain data to the Division of Workers' Compensation for injuries to public employees.

Committee substitute for committee substitute for House Bill 845 and committee substitute for committee substitute for Senate Bill 1138 relate to self-insured funds created under Section 624.4621, Florida Statutes. Applications for such coverage must specifically state that such a policy of coverage is fully assessable and if deficits result in the fund, each member will be required to contribute additional funds to respond to such a situation. The bill also allows for the creation of an Electric Cooperative Self insurance Fund. In the House, the bill has been placed on special order calendar. In the Senate, the bill has proceeded through several committees and is expected to be considered by the full Senate shortly, having been favorably reported out of the Policy and Steering Committee on Ways and Means.

Committee substitute for bills 674 and 1422 (combined bills) relate to owners of property acting as their own contractor and providing direct onsite supervision of all work. In these situa-

tions, the owner is required to provide workers' compensation coverage to unlicensed workers. If an owner-builder permit is obtained and a licensed contractor is hired, the owner is responsible for verifying that the contractor has the required workers' compensation insurance coverage. These combined bills were favorably reported by the Senate Regulated Industries Committee.

Workers' Compensation Insurers' Standards and Practices-Rule 69L-24 Florida Administrative Code (FAC)

A second workshop has been held by the Division of Workers' Compensation to discuss the proposed new rule concerning the standardization of audit procedures and penalty assessments for claims entities handling Florida Workers' Compensation cases. The purpose of this new rule is to make transparent audit procedures to be followed by the Division when reviewing claims.

The new rule identifies specific items that will be audited and specific information that will be requested by the Division from claims handlers. Penalties that can be assessed are those which are mandatory, those which are payable if certain standards of conduct are not met, untimely actions that can create non-willful penalties, and finally, those actions that can be the basis of a willful penalty assessment.

Failing to timely file the DFS-F2-DWC-1 (First Report of Accident or Illness) with the Division creates an automatic penalty regardless of whether minimum

standards are met. Standards of timeliness in taking certain actions which fall below 95% for all actions taken can be the basis of penalty assessments for: the late payment of compensation to injured workers; the late payment denial or adjustment of medical bills; and the untimely filing of medical bills with the Division of Workers' Compensation.

Non-willful violations can warrant the imposition of penalties if compliance with standards fall below 90%. These non-willful penalties include those related to: untimely filing of certain forms; untimely compliance with orders of Judges of Workers' Compensation Claims and department orders, rules, and directives; untimely compliance with CPS timeframes; and untimeliness of medical authorizations.

Willful violation by claim handlers concern intentional misconduct and the failure to comply with an order of the Department after the insurer has exhausted all applicable appellate rights.

A complete copy of the developing rule can be obtained by referencing <http://www.myfloridacfo.com/wc/pdf/notice69L-24.pdf>.

Update of Forms Web Page

The Florida Division of Workers' Compensation has updated the form web page to include recent changes made as a result of revisions to Rule 69L-3 effective March 16, 2009. Forms were also revised to comply with the revisions to Section 119.071(5), Florida Statutes (2007) that precludes an agency from collecting an individual's social security number unless such collection conforms to the specific provisions of this statutory provision. Recent form updates can be viewed at <http://www.myfloridacfo.com/wc/forms.html>.