

March 21, 2022

What's New In Our Industry-Workers' Compensation Actions Taken in 2022 Legislative Session

Regular Session (January 11 – March 11, 2022 and Special Session March 14, 2022)

The following summarized bills passed in the 2022 Regular/Special Sessions of the Florida Legislature having relevance to Workers' Compensation issues.

SB 7018 amends Section 440.1851, F.S., deleting from the Open Sunset Review Act Section 119.07(1), F.S., and in accordance with Section 24(a), Article I of the State Constitution exempting personal identifying information retained by the state as related to employees injured or deceased from work related accidents. Approved by the Governor on 2/24/22.

SB 542 Evidentiary Standards for Actions of a Business During an Emergency. During a public health emergency declared by the State Health Officer under §381.00315, Florida Statutes, or a state of emergency declared by the Governor under §252.36, F.S., the following actions of a business may not be used as evidence in a civil cause of action brought under Sections 440.10, F.S., 440.192, F.S., 440.38, F.S., and 440.381, F.S.:

- a. Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns;
- b. Directly providing benefits that are related to health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks or medical testing;
- c. Providing training or information related to the health and safety of engaged individuals or the public; and
- d. Taking any action, including action required or suggested by any federal, state, or local law, ordinance order or directive which is intended to protect public health and safety.

SB 156 – Loss Run Statements. Requires insurance carriers to provide to an insured upon request and within 15 calendar days after a request is made for the production of Loss Run Statements. (Does not include certain personal lines of coverage.) The 15-day response time runs from when an individual or entity designated by the insurer receives the written requests.

CS for HB 1023 – Workers’ Compensation Insurance Rates. In the determination and fixing of workers’ compensation insurance rates, the impact resulting from the past loss experience and prospective loss experience for insurers whose data is missing because of insolvency will be used. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates.

CS for HB 689 – Presumption of Compensability Post-Traumatic Stress Disorder (PTSD) Claims-Correctional Officers. A new provision is established in Section 112.18155, F.S., to include correctional officers suffering from post-traumatic stress disorders presumed to be work related if certain work related activities occur. The PTSD must be demonstrated by clear and convincing medical evidence diagnosed by a licensed psychiatrist who is authorized. There is no requirement that a physical injury to the correctional officer to have occurred. Apportionment, limitations on temporary benefits payable under Section 440.093, F.S., and limitations of 1% permanent impairment as provided for in Section 440.15(3), F.S., do not apply. The time for Notice of Injury or death in cases of a compensable PTSD is measured from the time of the qualifying event creating the presumption or the diagnosis of the disorder, whichever is later. A claim under the provision must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. Bill requires the employing agency to provide educational training related to various aspects of mental health.

CS for CS for CS HB959. Bill applies to multiple issues but those that have specific workers’ compensation applications include the following:

1. Defines Employer

Amends Section 440.02 defining “employer” to include employee leasing companies as defined by §468.520(5), F.S., and employment agencies that provide their own employees to other persons. Eliminates reference to “employment agencies” as defining an employer.

2. Exemptions from Coverage (Corporate Officers)

- a. Amends Section 440.05 in regards to elections of exemptions from the Workers’ Compensation Act. Deletes requirement for exemption for applicant to provide his/her Social Security Number. The corporate officer seeking an exemption must complete an on-line workers’ compensation coverage and compliance tutorial developed by the Department.
- b. Upon written request from a workers’ compensation carrier, the Department shall send an electronic notification to the carrier identifying each of its policy holders for which a Notice of Election to be exempt is filed.
- c. Upon the revocation of a Certificate of Election of Exemption, the Department is not required to notify the workers’ compensation carrier identified in the Request for Exemption.
- d. The Certificate of Election to be Exempt must contain the following notice: “This Certification of Election to be Exempt is NOT a license issued by the Department of Business and Professional Regulation (DBPR). To determine if the certificateholder is

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required to have a license to perform work or to verify the license of the certificate holder, go to www.stateofflorida.com/business-regulation/ for where to find this information.”

- e. The Certificate of Election to be Exempt applies only to the corporate officer named in the notice of election to be exempt. Deletes the requirement of the election to be exempt to apply only within the scope of the business or trade listed on the notice of election to be exempt.

3. Compliance

- a. If there is a determination that an employer does not have workers’ compensation coverage, requires employer to respond to a business records request by the Department within 21 days after receipt of the request.
- b. Current law allows for an Order of Conditional Release from a Stop Work Order to the employer upon a finding that the employer has complied with the coverage requirement under the Workers’ Compensation Statute. This waiver of the Stop Work Order can be entered by the payment of a penalty of \$1,000 as a down payment and an agreement to remit periodic payments of the remaining penalty. However, this payment agreement schedule can only be agreed to if the employer has fully paid a previous penalty.
- c. If an employer has been issued a Stop Work Order for materially understating or concealing payroll or has been previously issued a Stop Work Order or Order of Penalty Assessment, the preceding 24-month period shall be used to calculate the penalty as allowed for to be assessed by the Department.
- d. If an Employer who has not been previously issued a Stop Work Order or Order of Penalty Assessment, the Department must reduce the final assessment by 15% if the employer correctly answers at least 80% of the questions from an on-line workers’ compensation coverage and compliance tutorial. Further reduction in penalties are allowed under certain circumstances.
- e. Within three business days after the employer or employee informs the carrier of an injury on-the-job, the carrier shall send by regular mail or email to the injured worker an informational brochure which sets forth an explanation of the rights, benefits, and procedures for obtaining workers’ compensation benefits; also explaining criminal penalties and obligations of the injured workers and their employers under the Workers’ Compensation Act.
- f. Audits of Payroll and Classifications
Requires the Financial Service Commission to establish by rule minimum requirements for audits of payroll and classifications to determine appropriate premiums payable for workers’ compensation coverage. The rules must require that employers in all classes other than the construction class be audited at least biennially. Employers in the construction class generating more than the amount of premium required to be experience rated must be audited at least annually. Such

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audits must consist of physical on-site audit for policies only if the estimated annual premium is \$10,000 or more.

4. Physician Maximum Fee Schedule

Conspicuously missing from the bill is the ratification of the most recent Fee Schedule for treating physicians treating workplace injured employees. Allegedly, this deletion was at the request of certain pharmaceutical employers. See HB 1123 and SB 1274 that did provide ratification for Fee Schedule.

CS for HB 453 Presumptions of Compensability –Tuberculosis, Heart and Hypertension Claims Firefighter; Correctional Officer and Correctional Probation Officers. Adds correctional officers, and correctional probation officers to the list of employees entitled to the Presumption of Compensability of tuberculosis, heart disease, or hypertension provided such conditions meets certain entitlement provisions including the fact that a pre-employment medical examination failed to reveal any evidence of these conditions. If a firefighter did not undergo a pre-employment physical examination, the medical examination required by §633.412(5), F.S., would be utilized. If the firefighter did have a pre-employment physical, the employing fire service provider must maintain records of the physical examination for at least five years after the employee’s separation from the employing fire service provider. If the employing fire service provider fails to maintain the records of the physical examination for the five year period after the employee’s separation, it is presumed that the employee has met the requirements of a pre-employment physical and there was no evidence of the existence of such conditions.

SB 2516 – Judges of Compensation Claims. Amends Section 440.44(5) deleting the statute’s requirement that there be 17 district offices, 11 Judges of Compensation Claims, and 31 mediators as they exist on June 30, 2001. Passed in the extended session on March 14, 2022 in Senate and House Conference Committee.

SB 7016 – Insurer Anti-Fraud Investigation. Amends §626.9891, F.S., related to anti-fraud reports required to be filed by insurers, including insurers writing workers’ compensation insurance. Deletes the provision in the law that states that all reports submitted are subject to the Open Government Sunset Review Act.

SB 7014 – Covid-19 Related Claims Against Health Care Providers. Causes of actions against health care providers pursuant to §768.381, F.S., applies to claims that have accrued before the effective date of the bill creating this cause of action and before June 1, 2023.

**Bills Considered by the 2022 Legislative Session
and Extended Session that did not pass**

Although the following bills did not pass in the 2022 Legislative Session, there may be some indication that these bills may be filed in future sessions or at the very least indications that there is some interest by the Legislature in the subject matter of the bills.

HB 667 and SB 1394 Toxic Mold Protections Act creating Section 83.252, Florida Statutes – Bills withdrawn.

HB 1123 – Workers’ Compensation Health Care Provider Assessment Manual Ratification-Bill withdrawn. Bill deleted from HB 959 that passed on same subject matter.

SB 1274 – Related to Healthcare Provider Assessment Manual Ratification – Bill withdrawn. Bill deleted from HB 959 that passed on same subject matter.

SB 734 – Public Health Officers – Vaccinations- Bill withdrawn.

SB 688-Florida Family and Medical Leave Act – Bill withdrawn.

HB 295 – Employer Leasing Companies – Bill withdrawn.

SB 468 – Workers’ Compensation Premium Audits – Bill withdrawn.

HB 41-Litigation Financing Consumer Protection Act – Bill withdrawn.

HB 117-Covid-19 and Infectious Disease – Bill withdrawn.

SB 774 – related to Covid-19 and Infectious Disease –Bill withdrawn.

SB 432-see identical bill HB 391 Judicial Assistance – Bill withdrawn.

SB 540-Prescriptions by Psychologists – Bill withdrawn.

SB 594 – Covid-19 - Bill withdrawn.