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November 15, 2021

## What's New In Our Industry

### Florida

## WORKERS' COMPENSATION

### Legislative

### Special Legislative Session (November 15, 2021)

#### **JOINT STATEMENT FROM FLORIDA HOUSE SPEAKER CHRIS SPROWLS AND SENATE PRESIDENT WILTON SIMPSON**

**TALLAHASSEE, Fla.** (Oct. 21, 2021) – In response to today's morning press conference where Governor Ron DeSantis called for a special session to take a stand against the federal government's overreach, Florida House Speaker Chris Sprowls (R-Palm Harbor) and Senate President Wilton Simpson (R-Trilby) issued the following joint statement:

*"Across the country, hard-working employees and business owners trying to make a living are being threatened by the Biden Administration's reckless one-size-fits-all approach to Covid-19 vaccine mandates. Meanwhile, the rights of parents are being trampled on. Florida will respond to this gross overreach by the federal government.*

*In the coming days, we will review the Governor's specific proposals as well as discuss our own ideas for legislative action, including whether now is the time for Florida to withdraw from the Occupational Safety and Health Administration and establish our own state program. We believe that by doing so, Florida will have the ability to alleviate onerous federal regulations placed on employers and employees.*

*We stand with the dedicated health care workers, law enforcement, first responders, military service members, and all workers across the country who never got a day off and couldn't work from home during the pandemic. Too many of our esteemed heroes are facing termination thanks to heavy handedness at all levels of government. During the upcoming special session, our goal*

*is to make our laws even more clear that Florida stands as refuge for families and businesses who want to live in freedom.”*

### **Bills Filed to be Considered in Special Session**

**HB 1B, Companion Bill SB 2B Relating to Covid-19 Vaccine Mandates.** Employers may not impose a Covid-19 vaccination mandate for employees without providing individual exemptions that allow for an employee to opt out of such requirement on the basis of: medical reasons including but not limited to pregnancy or anticipated pregnancy and for religious reasons. Covid-19 immunity, periodic testing and use of employer provided personal protective equipment are provided for. Provides procedures to follow in seeking an exemption and processes to follow when exemptions are improperly denied. Complaints for improper procedural denials of employment will be handled by the Department of Legal Affairs and can result in administrative fines. Allows for the adoption of emergency rules to specify requirements for adhering to statutory mandates. Special provisions are created for vaccination mandates for students. Provides for the transfer of \$5 million from the General Revenue Fund to a designated account for complaint and investigation activities and for taking legal action to stop the enforcement of Covid-19 vaccination mandates. Bill specifically precludes any district school board to require students to wear a face mask that fits over the mouth or nose of a student. However, a parent at the parent’s sole discretion may allow his or her child to wear a face mask. Such mandates may not prohibit an employee from returning to work so long as the employee remains asymptomatic and has not received a positive test for Covid-19.

**HB 3B, Companion Bill SB 4B. An employee complaint** alleging a private employer’s violation of state mandated vaccine policies or practices is confidential and exempt from production until the investigation is completed or ceases to be active. After the investigation is completed or ceases to be active, information and records relating to the investigation remains confidential and exempt from production if such disclosure meets certain criteria. Precludes the production of an employee’s medical information and information regarding an employee’s religious beliefs remain confidential and exempt from public records requirements regardless of the status of the investigation.

**HB 5B, Companion Bill SB 6B Establishes the Florida Occupational Safety and Health State Plan.** Provides for the Executive Office of the Governor to develop a proposal for a state plan to assert state jurisdiction over occupational safety and health issues for government and private employees and “shall designate or hire appropriate staff as necessary to develop the proposal.” Designates several state agencies to assist with the development of the proposal, including the Division of Workers’ Compensation. On or before January 17, 2022, the Governor shall submit a status report for the creation of the state plan. For the 2021-2022 fiscal year, the non-recurring sum of \$1 million is appropriated to the Executive Office of the Governor for the purpose of implementing this state plan.

**HB 7B, Companion Bill SB 8B Relating to Vaccinations During Public Health Emergencies.** Removes the authority of the state health officer to order the vaccination of individuals upon declaration of a public health emergency. Allows for the state health officer during a public health emergency to take certain actions in regards to individuals such as requiring the individual to be

examined, tested, treated, isolated, or quarantined for communicable diseases but precludes an order requiring individuals to be vaccinated.

**Regular Legislative Session**  
**(January 11 – March 11, 2022)**

The Legislature has also begun its activity in preparation for next year's regular session with the filing of bills in both the House and Senate. Those bills having workers' compensation implications are listed below.

**Bills Filed Subsequent to the Previous Newsletter are Designated in Bold**

**SB 734 Related to Public Health Advisories and Responsibility of State Health Officer for Declaring Public Health Emergency and Actions to be Taken by Public Health Advisories to Protect Public Health.** Deletes actions that can be taken by the Public Health Officer to order individuals to be vaccinated. Retains the ability of the Public Health Officer to order an individual to be examined, tested, treated, isolated or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health.

**SB 742 Related to Pharmacy Benefit Managers to be Subject to Market Conduct Examination for Pharmacies.** The purpose of such examinations shall be to ascertain compliance with applicable provisions of Chapter 440, Florida Statutes. Establishes certain records to be included in audit.

**HB 453 Related to the Presumptions of Compensability of Conditions Specified in Section 112.18, Florida Statutes (Heart and Hypertension Claims).** As a condition to a presumption of compensability under the Workers' Compensation Act for these types of injuries, the claimant must have successfully passed the physical examination required for employment upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer which fails to reveal any evidence of tuberculosis, heart disease or hypertension. The employing agency must maintain records of the physical examination for at least 5 years after the employee's separation from the employing agency. If such physical examinations are not maintained for this period of time, it is presumed that the employee has met the requirements of a physical exam showing no evidence of having tuberculosis, heart disease or hypertension.

**SB 688 Florida Family and Medical Leave Act** is created by adding Chapter 444, Florida Statutes, which provides paid family and medical leave to employees for the birth, adoption, or foster care placement of a new child. The bill recognizes that the majority of employees in Florida are unable to take family and medical leave because they are unable to afford leave without pay. Such paid leave shall be for 12 months and will run concurrently with leave taken under the Federal Family and Medical Leave Act. The employer must maintain and pay for coverage for a group health plan during the leave and the employee must return to work in the same position after the period of leave that he had previously thereto. Medical leave insurance benefits are created.

**HB 431 Relating to law enforcement officers employed by the Financial Services Commission, Office of Financial Regulations, Bureau of Financial Regulation.** Allows for the Bureau to include law enforcement officers among its investigative personnel who shall be considered state law enforcement officers for all purposes. These law enforcement officers' duties and responsibilities are defined including the execution of arrest warrants and search warrants, serving subpoenas, making arrests, and making arrests upon probable cause without a warrant. See several statutory provisions under the Workers' Compensation Act and §112.18, F.S., related to law enforcement officers.

#### Bills Previously Summarized for Consideration in Regular Session

House Bill 295 Workers' Compensation Coverage for Employer Leasing Companies –Contractual arrangements between PEOs and client companies engaged in the construction industry (contractors and subcontractors) must provide that all employees who are hired by contractors/subcontractors or a leasing company (leased or non-leased) are deemed employees of the leasing company for purposes of workers' compensation coverages. Requires at least a 10-day notice to the construction company client of cancellation of the contract allowing the client company to cure any contractual defaults or deficiencies within that time period frame. Precludes employee leasing companies from sponsoring a self insurance program for health benefits unless an admitted insurance carrier has issued a policy of insurance being primarily responsible for the obligations of the health plan. If the employee leasing company terminates its contractual agreement with a construction client company, it must send the Notice of Cancellation by first class mail to the client company at its last known address and to leased employees and non-leased employees, providing information as to the date of cancellation.

Client companies engaged in the construction industry must make available to the licensed employee leasing company records necessary to verify payroll and must allow leasing companies to make physical inspections of the client company's operation. If there is a failure to provide information and an audit cannot be completed, the client company shall pay a penalty not to exceed three (3) times the most recent estimated annual premium to the licensed employee leasing company. If a client company misrepresents payroll or employee duties, attorney fees and penalties are enforceable in the circuit court having jurisdiction over the licensed employee leasing company. If an accident occurs on the job to an employee not reported to the leasing company, the client company shall indemnify the leasing company for all benefits paid to or on behalf of the injured employee plus attorney fees.

Senate Bill 200 - First Responder Definition Expanded - Expands the definition of "First Responders" for the determination of compensability of employment related accidents and injuries to include correctional officers as defined in s. 943.10(2), correctional probation officers as defined in s. 943.10(3) and 911 public safety telecommunicators as defined in s. 401.465(1). Includes volunteers in these professions. Requires at least one hour of continuing education annually which must include specific training on evidence-based coping strategies to mitigate traumatic stress in first responders as well as information on suicide prevention and other topics.

Senate Bill 468 – Audits Concerning Payments of Workers' Compensation Premiums - Provides for the adoption of rules related to audits of payroll and classifications to ensure that appropriate premiums are charged for workers' compensation coverage (construction and non-construction).

Such rules must ensure that audits are performed by carriers and employers. Audits must be performed at least biennially. Employers paying premiums in the construction industry sufficient to be experience rated must be audited at least annually. For employers in the construction industry, the audit must be a physical on-site audit for new and renewal policies if the estimated annual premiums are \$10,000 or more. Amends s. 440.381.

House Bill 17 - Telehealth Providers may not use telehealth to prescribe a controlled substances listed in Schedule II of s. 893.03, except for treatment of a psychiatric disorder, inpatient treatment at a licensed hospital, treatment of a patient receiving hospice services, or treatments of a resident in a nursing home facility.

House Bill 41 – Litigation Financing Consumer Protection Act. Litigation financing is described as being a litigation financier providing funds to a consumer in exchange for an assignment of the consumer’s contingent right to receive an amount of the potential proceeds of a consumer’s civil action or claim. Workers’ compensation claims are specifically excluded from the definition of litigation financing.

House Bill 117 – Covid-19 or Infectious Diseases Where the Disease Has Been Declared a Public Health Emergency are treated the same way as hepatitis, Meningococcal Meningitis and tuberculosis in regards to emergency rescue and public safety workers (firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer) employed full-time by the state or any political subdivision. Such conditions are presumed to be suffered in the line of duty, unless the contrary is shown by competent evidence. The employee must verify by written declaration that to the best of his or her knowledge and belief that he or she had not been exposed, outside the scope of his or her employment, to any person known to have Covid-19 or the infectious disease. In the case of an infectious disease, such employee must have contracted the infectious disease during a public health emergency declared in accordance with s. 381.0031. A similar bill (HB 53) was filed but withdrawn. See SB 774.

Senate Bill 432; See also HB 391 – Judicial Assistants. Amends s. 110.071 - Related to Judicial Assistants making personal information related to these individuals and their families exempt from public records disclosure requests.

Senate Bill 540 – Prescriptions by Psychologists – Provides for the Board of Psychology to certify psychologists to prescribe medications including controlled substances in the treatment of patients. A method of certification and renewal is provided for.

Senate Bill 594 – Covid-19 – A governmental entity may not require persons to provide any documentation certifying Covid-19 vaccination or post-infection recovery to gain access to, entry upon, or service from the governmental entities operations in this state or as a condition of licensure or certification in this state. A person aggrieved by a violation of this law has a right of action in circuit court for injunctive or other equitable relief and is entitled to recover damages and reasonable attorney fees for each violation. Establishes criteria to determine the efficacy of using Covid-19 vaccine. (See subject of Special Legislative Session.)

## **Administrative**

On November 12, 2021, David Altmaier, Commissioner, Office of Insurance Regulation, entered a Final Order on the Workers' Compensation Rate Filing in response to the NCCI filing dated August 26, 2021. The filing by NCCI proposed a 4.9% decrease in the overall rate level to be effective January 1, 2022 on new and renewal workers' compensation policies. A 4.9% overall average statewide decrease was approved.

## **Judicial**

### **Doss v. United Parcel Services**

46 FLW D2431

11/10/21

Claimant suffered a compensable accident and was paid temporary benefits. Subsequently, the claimant had surgery and following the surgery, sought additional temporary benefits. Prior to the surgery, the claimant had exhausted his entitlement to temporary benefits in accordance with Section 440.15(3)(c), Florida Statutes. JCC denied the entitlement to temporary benefits because the maximum amount of temporary benefits had been exhausted prior to the time of the surgery. Court determined that the limitations of Section 440.15(3)(c), Florida Statutes, was constitutional as applied and was not a violation of the right of access to courts. Accordingly, the JCC's denial of benefits was affirmed.

### **Hospitals East LLC d/b/a Kindred Hospital – North Florida v. Hampton**

46 FLW D2433

11/10/21

JCC entered order awarding the claimant benefits including fees and costs entitlement but reserved jurisdiction "to determine the amount thereof (attorney's fees and costs) if the parties were unable to amicably resolve this issue. That order was affirmed Per Curiam. Court determined that reservation of jurisdiction over the amount of fees and costs did not have the effect of tolling the running of the statute of limitations. This is to be distinguished from the reservation of entitlement to fees and costs that does toll the running of the statute of limitations.