# FLORIDA AND GEORGIA WORKERS COMPENSATION ISSUES: 2023 CLAIMS HANDLING UPDATE

Course Title: Accidents, Injuries and Occupational Diseases

What types of medical conditions and illnesses are compensable under Florida Law? The Panel will discuss the statutory requirements for compensability of physical and mental conditions, including infectious diseases such as COVID.

# ACCIDENTS, INJURIES AND OCCUPATIONAL DISEASES

## PHYSICAL INJURIES – 20 minutes

* 1. Discussion of the definition of accident contained within Section 440.02(1), Florida Statutes, as it relates to physical injuries. The event must be unexpected, unusual or a result that happens suddenly.
     1. An “accident” must actually be accidental. Per Section 440.09(3), Florida Statutes, injuries caused by intoxication or by the willful intent of the employee to injure himself or another are not compensable. Discussion of the Aggressor Doctrine.
     2. Objective relevant evidence may be presented by diagnostics or by physical examination.
  2. A discussion of coverage and workers compensation immunity issues in situations involving an employer’s intent to cause harm or gross negligence on the part of the employer.
  3. The 120-day rule. Churchill v. DBI Services, LLC, 361 So. 3d 896 (Fla. 1st DCA 2023).
  4. Necessity of medical evidence. A discussion of Closet Maid v. Sykes, 763 So. 2d 377 (Fla. 1st DCA 2000), and Cintas Corporation v. Price, 424 So. 2d 900 (Fla. 1st DCA 1983). Medical evidence is essential to establish certain types of injuries occur and is not required when injuries are readily observable.
  5. Repetitive trauma injuries. While not meeting the traditional definition of an accident per Section 440.02, Florida Statutes, repetitive trauma can also constitute a compensable accident and injury. Discussion of the relevant Case Law on this subject including Festa v. Teleflex.
  6. Idiopathic/idiosyncratic injuries are not compensable without occupational causation. Soya v. Health First, Inc., 337 So. 3d 388 (Fla. 1st DCA 2022); Silberberg v. Palm Beach Cnty. Sch. Bd., 335 So. 3d 148 (Fla. 1st DCA 2022).

## MENTAL INJURIES - 15 minutes

* 1. Statutory requirements for a mental or nervous injury as set out in Section 440.093.
     1. “A mental of nervous injury due to stress, fright or excitement only is not an injury by accident arising out of employment.” Section 440.0393(1), Florida Statutes.
     2. Mental or nervous injuries must be demonstrated by clear and convincing medical evidence by a licensed psychiatrist.
     3. The compensable physical injury must be and remain the Major Contributing Cause of the mental or nervous condition except when the Appellate Court says otherwise. McIntosh v. CVS Pharmacy, 135 So. 3d 1157 (Fla. 1st DCA 2014).
  2. Limitations on the permanent impairment rating for mental injuries per Section 440.15.
  3. Limitations on the six-month statutory cap on indemnity benefits due after physical MMI. Jones v. Dep't of Corr.-Columbia Corr. Inst./State of Florida Div. of Risk Mgmt., 324 So. 3d 44 (Fla. 1st DCA 2021).

## SPECIAL RULES UNDER SECTION 112.1815 10 minutes

* 1. Types of occupations which are entitled to special treatment and benefits.
     1. Indemnity benefits are payable for certain occupations if they meet certain criteria. A discussion of the post-traumatic stress disorder requirements set out in Section 112.1815, Florida Statutes.

1. What type of injury must be suffered before indemnity benefits are paid for a mental or nervous injury? A discussion of benefits available for injuries resulting just from stress versus benefits available for individuals who suffer a combination of physical and mental injuries.
   * 1. Cases involving First Responders and post-traumatic stress disorder versus everyone else.
2. A discussion of the date of accident and the date of disablement/disability. When does a compensable accident occur for a First Responder?

# ORDINARY DISEASES OF LIFE, TOXIC SUBSTANCES AND OCCUPATIONAL

## DISEASES – 15 minutes

* 1. The pre-COVID legal environment.
     1. Diseases caused by exposure to toxic substances, such as fungus or mold, are not compensable absent clear and convincing evidence establishing causation, the specific substance involved and the level of exposure per Section 440.02(1), Florida Statutes. Sch. Dist. of Indian River Cnty. v. Cruce, 289 So. 3d 36 (Fla. 1st DCA 2019)
     2. Requirements of occupational diseases are set out in Section 440.151, Florida Statutes. Ordinary diseases of life are excluded from the definition of occupational diseases unless the incidence of the disease is substantially higher in the particular trade, occupation or employment than for the general public. Epidemiological studies must exist to support the concept of an occupational disease.
     3. General rules-
        1. Specific to particular occupation (must be substantially higher than other occupations or general public).
        2. Contracted during employment
        3. Employment is the Major Contributing Cause of the resulting disease
     4. Discussion of typical cases involving the aforementioned statutory provisions prior to COVID
  2. Post-COVID legal environment. A discussion of how legal issues have been impacted by the government’s response to the COVID emergency.
  3. A discussion of the current state of the Law, including any changes in the Statutes or interpretive Case Law involving these subjects.