# **ACCIDENTS, INJURIES AND OCCUPATIONAL DISEASES COURSE OUTLINE**

# PHYSICAL INJURIES

## FS § 440.02(1) Definition of an accident.

### FS § 440.02 defines “accident” as only an unexpected or unusual event or result that happens suddenly. The statute explicitly states the following is not an injury by accident: Disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, or a disease that manifests itself in the fear of or dislike for an individual because of the individual's race, color, religion, sex, national origin, age, or handicap is not an injury by accident arising out of the employment

### An “accident” must actually be accidental. Per FS § 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.

## FS § 440.11 “Exclusiveness of liability.”

### FS § 440.11 provides that workers’ compensation is the exclusive remedy available to an injured employee as to any negligence on the part of that employee’s employer.

### The exception to this exclusive remedy is in instances of employers engaging in any intentional act that was designed to result in injury or death, or in which is substantially certain to result in the injury or death to the employee.

### The goal of workers’ compensation law is to get benefits to injured workers quickly, ensuring the worker gets the benefits they need in order to return back to the workforce in some capacity.

### The effect of workers’ compensation law is a compromise between employers and employees, providing prompt benefits to injured workers, regardless of fault, and employees in turn give up their common law rights to sue their employer in tort.

### This benefits the employer as it limits the liability on part of the employer, caps the payouts, and an accelerated timeline set by statute to resolve the process quickly.

## Necessity of medical evidence.

### FS § 440.09 provides “the injury, its occupational cause, and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on objective relevant medical findings, and the accidental compensable injury must be the major contributing cause of any resulting injuries.”

### Although previously undefined by the legislature, the statute now defines major contributing cause as “the cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought.”

### Before the statute was amended to define Major Contributing Cause, Closet Maid v. Sykes, 736 So. 2d 377 (Fla. 1st DCA 2000) defined MCC and established when medical evidence is necessary.

### In *Closet Maid,* the Claimant worked in the warehouse receiving merchandise for Closet Maid. One day, while unloading a pallet of boxes, one box fell and struck him on the head. As a result, the Claimant sustained injuries to his back and neck. The accident was accepted as compensable. After authorizing treatment, medical testing revealed that the Claimant had a pre-existing condition, known as spinal stenosis (or arthritis of the spinal canal). The Claimant was not aware of the condition until the industrial accident. Claimant had in fact, worked more than 20 years doing manual labor without significant back pain or disability. Following conservative treatment, the authorized treating physician recommended back surgery, which was denied by the Carrier. Doctor testimony elicited that 75% of the Claimant’s condition and resulting impairment was as a result of the spinal stenosis and 25% was related to the work accident. The neurosurgeon also expressed that the Claimant probably would have needed surgery at some point in the future even had the work accident not occurred, but could not say when. He also noted that his current recommendation for surgery was precipitated by the Claimant’s pain, as resulting from the effects of the accident rather than the deficient spinal column. Based on the medical findings, the JCC ordered the back surgery, relying on the doctor’s testimony rather than his opinion on major contributing cause.

### The court concluded that FS § 440.09 “does not invariably require medical evidence to show that a workplace accident is the major contributing cause of a disability or need for treatment. In some cases, the connection between the accident and the injury may be so clear that it does not require medical proof.”

### However, In contrast, the court stated “medical evidence may be essential when the circumstances do not permit causation to be determined on matters which are susceptible of observation or other sensory perception by lay witnesses. This is often the case with injuries which are not readily observable.” “This distinction, between situations where medical expertise is essential, and other situations where facts established through lay testimony may establish causation, necessarily depends on the particular circumstances of each case. [Section 440.09(1), Florida Statutes](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000006&cite=FLSTS440.09&originatingDoc=I20bf35f80ce011d99830b5efa1ded32a&refType=SP&originationContext=document&transitionType=DocumentItem&ppcid=2087cb03379748bba450e7d066a9a44a&contextData=(sc.Search)#co_pp_f1c50000821b0) (Supp.1994), does not compel a different approach or alter the long-recognized principle that the cause of a workplace injury may be established by either medical or lay evidence.”

### The First DCA has recognized that a “determination of reasonable medical certainty depends on the substance of the evidence, rather than the use of the ‘reasonable medical certainty’ terminology, or any other so-called ‘magic words,’ by a medical witness” (quoting Closet Maid v. Sykes, 763 So. 2d 377, 383 (Fla. 1st DCA 2000)). Thus, it is not enough for a testifying doctor to simply state that they used a reasonable degree of medical certainty, there must be some kind of substantial evidence to support that statement.

## 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.

### Exposure and repetitive trivial trauma are compensable events subject to the requirements below. The exposure theory of accident “should be applied in cases involving injuries resulting from repeated trauma.” Festa v. Teleflex, Inc., 382 So. 2d 122, 124 (Fla. 1st DCA 1980). In order for a claimant to recover under the exposure theory of accident the claimant must show “1) prolonged exposure, 2) the cumulative effect of which is injury or aggravation of a pre-existing condition and 3) that he has been subjected to a hazard greater than that to which the general public is exposed.” Id. Alternatively, claimant can also recover under the exposure theory if claimant can “demonstrate a series of occurrences, the cumulative effect of which is injury”. Id.

### Under the first prong of the *Festa* Test claimant must show prolonged exposure. The courts have found almost any period will suffice. In J & J Enterprises v. Oweis, 733 So. 2d 1149 (Fla. 1st DCA 1999) claimant worked for the employer only two weeks before experiencing symptoms, to which the appellant contested the applicability of Festa for such a short timeframe. The court stated “..*Festa* does not impose a minimum temporal threshold, and the time here involved will suffice for both *Festa* alternatives of “prolonged exposure” and “series of occurrences,” insofar as the evidence establishes that the injury ensued from the claimant's workplace activity.” Id.

### Under the second prong of the *Festa* testclaimant must show the cumulative effect of (exposure) which is injury or aggravation of a pre-existing condition. In order for a claimant to prove a “cumulative effect” requires evidence that the respective trauma was a regular aspect of his employment, and then prove that the repetitive trauma caused claimant’s injury. In Simmons v. Fairchild Indus., 477 So. 2d 60 (Fla. 1st DCA 1985), claimant suffered a back injury, saw multiple physicians, and none of the physicians related the condition to claimant’s employment, deputy found no causal relationship had been established. The court held that claimant failed to provide evidence “that heavy lifting was a frequent or even regular aspect of his employment, and no medical testimony demonstrated that the lifting which he did perform resulted in the injury to his back”. Id.

### Under the third prong of the *Festa* test claimant must show the hazard causing the repetitive trauma is a hazard that is greater than those faced by the public. “The “hazard” prong of the *Festa* test does not require a claimant to show that he or she was subjected to a condition unique to his employment, but rather that his workplace exposure to that condition is materially in excess of that undergone by the general public.” Sewell v. J.C. Penney, 569 So. 2d 1335, 1336 (Fla. 1st DCA 1990). In *Sewell*, the court found that exposure to air condition and hard flooring is common to the general public, however the court pointed to additional facts about the exposure and stated claimant was “exposed to “very cold” air conditioning and standing on hard flooring, in combination, for the entirety of her work day. Further, working constantly with arms elevated above shoulder level clearly exceeds the performance of such movement by the general public.” Id. The practical effect is that when defending against these claims the defense should offer some contradictory evidence showing that the claimant’s hazards are quite typical and usual.

### Under the alternative *Festa* test, in order for the claimant to meet the burden of proof “…the claimant must demonstrate a series of occurrences, the cumulative effect of which is the injury, the claimant is not required to show, in addition, that he has been subjected to a hazard greater than that to which the general public is exposed.” Rodriguez v. Frito-Lay, Inc., 600 So. 2d 1167, 1172 (Fla. 1st DCA 1992). If claimant can show that a series of workplace tasks had the cumulative effect of causing an injury, then claimant still has a compensable claim, without needing to show claimant has been subjected to a hazard greater than that to which the general public is exposed. In [Winn-Dixie Stores v. Morgan, 533 So. 2d 783 (Fla. 1st DCA 1988)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1988108807&pubNum=0000735&originatingDoc=I41e8db310f2f11dabc4dbc8043910a62&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=24c2832f570e405a9dea78438268e8d9&contextData=(sc.Category)), the claimant was an employee of Winn-Dixie for 13 years, and claimant’s tasks included stocking shelves, bagging groceries, unloading trucks, moving carts of frozen foods, and cleaning and stocking produce. Claimant was injured while opening the store safe. The court found claimant’s injury compensable under the alternative theory, stating they found competent substantial evidence in the record (the medical evidence) led the deputy to conclude that the work performed by the claimant led to the development of his Kienbock’s disease, and found claimant injury compensable under the alternative test.

### In cases where there is a pre-existing condition an additional factor is required to be met, claimant must prove that his preexisting condition was either exacerbated by a non-routine and job related physical exertion or by some form of repeated physical trauma, and still need to prove major contributing cause. The Supreme Court of Florida added this additional factor to ensure injuries caused by or aggravated by stress non compensable.

# MENTAL INJURIES

## Statutory requirements for a mental or nervous injury as set out in FS § 440.093.

### Per FS § 440.093 “A mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment. Nothing in this section shall be construed to allow for the payment of benefits under this chapter for mental or nervous injuries without an accompanying physical injury requiring medical treatment. A physical injury resulting from mental or nervous injuries unaccompanied by physical trauma requiring medical treatment shall not be compensable under this chapter.”

### Mental or nervous injuries must be demonstrated by clear and convincing medical evidence by a licensed psychiatrist.

### For major contributing cause FS § 440.093 provides that “The compensable physical injury must be and remain the major contributing cause of the mental or nervous condition and the compensable physical injury as determined by reasonable medical certainty must be at least 50 percent responsible for the mental or nervous condition as compared to all other contributing causes combined.”

## FS § 440.093 as modified by McIntosh v. CVS Pharmacy

### The apparent clear meaning of FS § 440.093 has been modified by the First DCA in McIntosh v. CVS Pharmacy, 135 So. 3d 1157 (Fla. 1st DCA 2014), the court found the law makes compensable those situations where, as a result of the compensable accident, the claimant suffers two injuries: both a physical injury and a mental injury.

* + 1. Physical trauma must require medical care;
		2. Mental injury directly & immediately results of physical trauma;
		3. Nexus between physical trauma & mental injury must be proven by clear & convincing evidence; and
		4. Physical trauma is MCC of mental condition.

## Absence of a physical injury, no indemnity benefits are payable except first responders.

### FS § 440.093 provides that a mental or nervous injury due to stress, fright, or excitement only is not an injury by accident arising out of the employment. This section does not allow for the payment of benefits for mental or nervous injures without an accompanying physical injury requiring medical treatment.

### However, having a physical injury is not required for first responders to claim medical benefits under FS § 440.13 for mental injuries per FS § 112.1815 (2)(a)(3) which provides that a mental or nervous injury arising out of the employment unaccompanied by a physical injury involving a first responder, medical benefits are payable for the mental or nervous injury only to the extent allowed in FS § 40.13 (Medical services and supplies; penalty for violations; limitations).

### Note however the statue also provides that payment of indemnity as provided in FS § 440.15 (PTD, TTD, etc.) may not be made unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury.

## Special Rules Of Compensability Of Mental Injuries For Certain Occupations.

### FS § 112.1815 provides the special provisions for employment-related accidents and injuries for firefighters, paramedics, emergency medical technicians, and law enforcement officers.

### FS § 112.1815 uses the term “first responder” and defines who is qualified as a first responder in this section. First responders who are entitled to special rules are as follows:

### a law enforcement officer as defined in FS § 943.10,

### a firefighter as defined in FS § 633.102,

### an emergency medical technician or paramedic as defined in FS § 401.23 **employed by state or local government**.

### A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged **by the state or a local government** is also considered a first responder

### Posttraumatic stress disorder suffered by a first responder is a compensable occupational disease within the meaning of subsection (4) of FS 112.1815 and s. 440.151 if:

### The posttraumatic stress disorder must result from the first responder acting within the course of his or her employment (as provided in s. 440.091) and the first responder is examined and subsequently diagnosed with PTSD by a licensed psychiatrist (authorized by chapter 440) due to one of the following events:

### Seeing for oneself a deceased minor;

### Directly witnessing the death of a minor;

### Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

### Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

### Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

### Seeing for oneself a decedent whose death involved **grievous bodily harm of a nature that shocks the conscience**;

### Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;

### Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;

### Directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

### Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or

### Manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

### Such disorder must be demonstrated by clear and convincing medical evidence.

### Benefits for a first responder under this subsection:

### Do not require a physical injury to the first responder; and are not subject to:

### Apportionment due to a preexisting posttraumatic stress disorder;

### Pursuant to a new statute § FS 112.18155 effective July 1st 2022, the legislature expanded compensability of PTSD to correctional officers and part-time correctional officers, providing in the statute special provisions for posttraumatic stress disorder. In order for PTSD to be compensable the correctional officer or part-time correctional officer must be:

### (1) Examined by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440.

### (2) Diagnosed by the psychiatrist described in subparagraph 1. as suffering from posttraumatic stress disorder due to one of the following events:

### Being seriously injured by an inmate in a manner that shocks the conscience.

### Being taken hostage by an inmate or trapped in a life threatening situation as a result of an inmate’s act.

### Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

### Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

### Manually transporting a person who was injured, including by suicide attempt, and subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

### Directly witnessing a death, including a death by suicide, that involved grievous bodily harm of a nature that shocks the conscience.

### Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence.

### Seeing for oneself a decedent whose grievous bodily harm of a nature that shocks the conscience.

### The posttraumatic stress disorder must be demonstrated by clear and convincing medical evidence.

### Benefits for a correctional officer or part-time correctional officer under this section:

### Do not require a physical injury to the correctional officer or part-time correctional officer.

## Conscious shocking injuries

### 69L-3.009. Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience. Authority for specifying injuries is from FS § 112.1815(5)(f).

### To determine compensability of employment-related posttraumatic stress disorder for first responders the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:

### Decapitation

### Degloving

### Enucleation

### Evisceration

### Exposure of one or more of the following inter organs: brain, heart, intestines, kidneys, liver, lungs

### Impalement

### Severance (full or partial),

### And Third degree burn on 9% or more of the body.

### Pursuant to the amended statute FS § 112.1815 effective July 1st 2022. The notice required for a PTSD claim to be timely changed from the manifestation of the disorder, to the “diagnosis” of the disorder. This changes when a claim must be asserted as a claim must be properly noticed within 52 weeks after the qualifying event, or the “diagnosis of the disorder”, no longer the manifestation of the disorder.

# ORDINARY DISEASES OF LIFE AND OCCUPATIONAL DISEASES

## The pre-COVID legal environment.

### 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 FS § 440.02(1).

### Requirements of occupational diseases are set out in FS § 440.151. 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.

### FS § 440.02(1) Provides that “An injury or disease caused by exposure to a toxic substance, including, but not limited to, fungus or mold, is **not** an injury by accident arising out of the employment unless there is **clear and convincing evidence** establishing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee.”

### In Altman Contractors v. Gibson, 63 So. 3d 802, 803 (Fla. 1st DCA 2011) the E/C challenged an order from the JCC finding claimant’s mold exposure injury compensable. The court reversed the order on appeal, agreeing with the E/C’s argument that “reversal is warranted because no record evidence establishes the levels of mold to which Claimant was exposed in the workplace, a statutory condition imposed by section 440.02(1), Florida Statutes (2005).” Id. The court also found the “JCC erred in substituting the causation standard expressed in [*Festa v. Teleflex, Inc.,* 382 So.2d 122 (Fla. 1st DCA 1980)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980110957&pubNum=735&originatingDoc=I129b33d1725611e0a8a2938374af9660&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=f495c0bdf1844be78d772ce178b88feb&contextData=(sc.Search)), for the more exacting statutory causation standard for mold exposure claims enacted by the Legislature.” Id.

### In Matrix Employee Leasing v. Pierce, 985 So. 2d 631, 633 (Fla. 1st DCA 2008), the court stated (regarding Section 440.02(1), Florida Statutes (2005)) “The statute expressly requires both a higher standard of proof (“clear and convincing evidence”) and a certain degree of specificity as to the “specific substance involved” and the “levels to which the employee was exposed” before an injury from toxic exposure can be found compensable.”

### In Sch. Dist. of Indian River Cnty. v. Cruce, 289 So. 3d 36 (Fla. 1st DCA 2019) the E/C challenged a final order finding claimant’s death resulted from a workplace exposure to Cryptococcus neoformans fungus. The court reversed the decision of the JCC because the JCC improperly applied the statutory provisions of FS § 440.02(1) and FS § 440.09(1). In this case the JCC incorrectly determined that the heightened standard for toxic exposure under FS § 440.02(1) does not require proof, by clear and convincing evidence, of the quantitative level of exposure in all cases. The JCC incorrectly substituted the alternative standard for exposure under Festa v. Teleflex, Inc., 382 So. 2d 122, 123 (Fla. 1st DCA 1980), for that of section 440.09(1) with regards to burden of proof. The court stated: “Section 440.09(1) requires that the employee show a causal connection between the employment and the alleged exposure injuries. Just as section 440.02(1) dictates that the substance and the level of exposure be “specifically” proven, section 440.09(1) likewise requires proof of occupational causation with specificity and by clear and convincing evidence. Sch. Dist. of Indian River Cnty. v. Cruce, 289 So. 3d 36, 42 (Fla. 1st DCA 2019).

### Note that for first responders the evidence requirement for exposures to a toxic substance is different. FS § 112.1815 provides that there only need be a “preponderance of the evidence”.

### “An injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a **preponderance of the evidence** establishing that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee.” § 112.1815, Fla. Stat. Ann. (emphasis added).

### The following Black’s Law Dictionary definitions of the standards of proof may be helpful in understanding what is required of the claimant.

### Black’s Law Dictionary describes clear and convincing evidence as “Evidence indicating that the thing to be proved is highly probable or reasonably certain.” EVIDENCE, Black's Law Dictionary (11th ed. 2019).

### Black’s Law Dictionary describes preponderance of the evidence as “The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” PREPONDERANCE OF THE EVIDENCE, Black's Law Dictionary (11th ed. 2019).

## Post-COVID legal environment

### Executive Order 20-52 from Governor Ronald DeSantis.

### In response to the COVID-19 epidemic Governor Ronald DeSantis declared a state of emergency in EO 20-52 which authorized each State agency to suspend the provisions of any regulatory statute of that agency, if strict compliance with that statute would in any way prevent, hinder, or delay necessary action in coping with this emergency.

### This order was extended multiple times until it expired on June 26, 2021

### Executive Orders and Directives from the Department of Financial Services and Division of Workers’ Compensation

### CFO Directive 20-05 was issued in response to EO 20-52 and directed the DFS Division of Risk Management to provide workers’ compensation coverage for frontline state employees, while allowing individual agency heads to opt-out of these provisions. The order found “Frontline State Employees” perform critical functions which cannot be deferred or performed remotely and would require substantial contacts with people known or suspected of carrying COVID-19, and provided workers’ compensation benefits to these frontline employees who contract COVID-19 to support recovery and speed employees’ ability to resume critical functions for the State of Florida.

### This order expired on June 26, 2021 with the expiration of EO 20-52.

### CFO Directive 20-06 was issued in response to EO 20-52 and suspended employer penalty payments and reinstatement of stop-work penalty orders issued by the Division of Workers’ Compensation. The Directive also suspends strict compliance with the requirement that workers’ compensation insurers mail informational brochures pursuant to 440.185(3), and allows such insurers deliver the brochures by other means such as email of facsimile transfer.

### This order expired on June 26, 2021 with the expiration of EO 20-52.

### OIR-20-05M is an informational memorandum issued by the Florida Office of Insurance Regulation. This memorandum served as guidance on the treatment of policyholders for insurers and entities regulated by the Florida Office of Insurance Regulation whom are authorized to write workers’ compensation insurance. The memo provided information that First responders, health care workers, and others that contract COVID-19 due to work-related exposure would be eligible for workers’ compensation benefits under Florida law. OIR reminds insurers of applicable statutes regarding workers’ compensation insurance and expects workers’ compensation insurers to comply with all of the provisions of Florida’s Workers’ Compensation Law and will take appropriate action in the event of non-compliance.

### Number of COVID claims in Florida

### The Florida Division of Workers’ Compensation 2022 COVID-19 Report for April 2022 provides the relevant data.

### As of March 31st, 2022 there has been a total of 71,926 Indemnity claims for COVID-19.

### A total of $188,848,160 has been paid out for COVID-19 indemnity Claims.

### Total of 35,597 COVID-19 Indemnity Claims have been denied.



Source: Florida Division of Workers’ Compensation 2022 COVID-19 Report for April 2022

## Current state of the Law.

### Three bills were up for consideration during the last Session addressing the compensability of COVID-19.

### H.B. 53, H.B. 117, and S.B. 774

### Each of these bills had similar summaries: “Provides presumption to specified workers that impairment of health caused by COVID-19 or infectious disease happened in line of duty; requires certain actions in order to be entitled to presumption; requires emergency rescue or public safety workers to file incident or accident report under certain conditions.”

### H.B. 53 was filed on 8/27/2021, and subsequently withdrawn on 9/14/2021. Two days later on 09/16/2021 H.B. 117 was filed.

### The difference between the two bills was the first bill required vaccination as a condition for benefits.

### H.B. 117 was filed on 09/16/2021, and subsequently the bill died in the government operations subcommittee on 03/14/2022.

### H.B. 117 attempted to amend FS § 112.181 Subsections (1), (2), and (5) and paragraph (a) of subsection (6)

### Added language “and infectious” to types of diseases this statute covers.

### Subsection (1) added language including “COVID-19” in the definition of the term “Body fluids”

### Subsection 1(b) added “COVID-19” has the same meaning as in FS 768.381(1)

### Subsection 1(f) “infectious disease” means any condition or impairment of health caused by a disease that has been declared a public health emergency in accordance with FS § 381.00315.

### (d) In the case of COVID-19, in the 14 days immediately preceding diagnosis he or she was not exposed, outside the scope of his or her employment, to any person known to have COVID-19.

### (e) In the case of an infectious disease, he or she contracted the infectious disease during a public health emergency declared in accordance with s. 381.00315 and was not exposed, outside of the scope of his or her employment, to any person known to have the infectious disease.

### Subsection 1(g) added “COVID-19, or infectious decease” to the definition of “Occupational exposure”

### Subsection 2 added “COVID-19, or an infectious disease” as a condition than can be suffered by the worker for the presumption that an emergency rescue or public safety worker is presumed to have a disability suffered in the line of duty.

### Also added worker must provide an affidavit affirming that the previous 14 days worker was not exposed outside of employment to COVID-19 or an infectious disease.

### Subsection 5 added the requirement that the worker shall file an incident report if suspected occupational exposure to “COVD-19, or an infectious disease”

### Subsection 6 which requires medical tests and pre-employment physicals to be entitled to the presumption provided by this section, was amended to exclude “COVID-19, or an infectious disease” from the requirements of a pre-employment physical.

### H.B. 117 History

### 09/16/2021 (H) \* FILED

### 03/12/2022 (H) \* INDEFINITELY POSTPONED AND WITHDRAWN FROM CONSIDERATION

### 03/14/2022 (H) \* DIED IN GOVERNMENT OPERATIONS SUBCOMMITTEE

### Related bill S.B. 774: Communicable and Infectious Diseases

### S.B. 774 was a mirror image of H.B. filed in the house. This bill was filed on 11/02/2021 and subsequently died the same time as H.B. 117 on 03/14/2022.

### The statute governing exposure and occupational diseases remains unchanged.