

March 18, 2025

What's New In Our Workers' Compensation Industry Florida

“An up to date summary of what is happening in Florida related to workers compensation in all branches of government.”

Legislative Branch of Government

Bills Filed in 2025 Legislative Session, Directly or Indirectly Related to Workers' Compensation

The Regular session of the Florida legislature began on March 4, 2025. Based on the schedule that was previously provided in the January 2025 newsletter, all bills for consideration in this year's session must have been filed by 12:00 noon on March 4, 2025. The following bills summarized are those that have been identified as having either a direct or an indirect application to workers' compensation issues.

1. Alternative to Workers' Compensation

HB 1069 and SB 1426 introduce the “Occupational Injury Benefit Plan” (plan) as a substitute for the current workers' compensation process for compensating work-place injuries. The “Association for Responsible Alternatives to Workers Compensation” (ARAWC) which made a presentation to the House Banking & Insurance Subcommittee at last year's legislative session supports this process. Below is a summary of the bills.

(a). “Qualified Compensation Alternative Employer” (QCARE) is an employer that has elected an alternative coverage plan for its employees in place of the current workers' comp system compensating its employees for work-place accidents.

(b) The bills outline the conditions under which QCARE employees may sue their employer for negligence, the defenses QCARE employers may use in such cause of action, and prohibits QCARE employers from using certain defenses in civil causes of action.

(c) QCARE employers must adopt a written occupational injury benefit plan, specifying benefits payable to include the payment of medical expenses and loss of wage compensation.

(d) QCARE employers must demonstrate its financial responsibility/ability to pay benefits.

(e) Benefit payments by QCARE employers are considered as received under workers' compensation for tax purposes.

(f) QCARE employers can self-administer the payment of benefits or use third-party administrators ensuring compliance with associated laws and regulations.

2. Firefighter Health and Safety HB929 and SB1212 amend § 633.506 F.S., to enhance firefighter occupational safety and health in regards to implementing policies for work schedules. The bill is intended to reduce the incidents of firefighter accidents resulting in injuries compensable as occupational diseases and firefighter employee injuries/fatalities compensable under Chapter 112 F.S., and Chapter 440 F.S., or otherwise. Provides for the authority of the Division to develop rules relating to the use of firefighting gear and encouraging the implementation of rules limiting the scheduled work shifts not to exceed 42-hours per workweek. Provides for best practice procedures to be adopted related to mental health for firefighters including identifying individuals with a high frequency of occupational illnesses. SB1212 Amended in Committee.

3. Florida Comprehensive Healthcare Plan for Residents/Workers' Compensation Considered Collateral Benefits Under Plan – SB1752 creates a "Florida Comprehensive Healthcare Plan." Workers' compensation medical components of the Workers' Compensation Act are considered "collateral source benefits" under such a plan. If an employee receives medical benefits under the Workers Compensation Act for a workplace injury, that person must notify the healthcare plan provider of such. The workers' compensation provider shall reimburse the Plan for any sums paid or payable by the plan that should have been paid by the workers' compensation provider.

4. Firefighters Suffering Catastrophic Injuries: Entitlement to Health Insurance Coverage Post-Accident Payable by Employer SB1202 amends Section 112.191(2)(g)2, F.S. A firefighter suffering a catastrophic injury as defined in Section 440.02, F.S., shall be entitled to the payment post-accident for health insurance coverage payable by the employer. Such coverage should benefit and include coverage for the injured employee, the injured employee's spouse and the employee's dependent children for specified periods of time. The injury must have occurred because of the firefighter's response to what reasonably is believed to be an emergency involving the protection of life and property or an unlawful act perpetrated by another. The amendment referenced in this bill allows for the payment of health insurance premiums if the injury occurred during an official training exercise in which the firefighter became totally and permanently disabled. (No reference is made as to whether the payment for health insurance coverage post-accident will affect the calculation of the injured employee's average weekly wage for wage loss compensation payable or if the injured employee or other beneficiaries were being paid health coverage pre-accident.

5. Law Enforcement Officers, Correctional Officers And Correctional Probation Officers Suffering From a Catastrophic Injury; Entitlement to Health Insurance Coverage Post Accident Payable by Employer- (Compare to number 5 above for firefighters) SB1160 and

HB751 amend §112.19(2)(h) F.S. If a law enforcement officer, correction officer or a correctional probation officer suffers a catastrophic injury as defined by §440.02, F.S., he/she shall be entitled post-accident to the payment of health insurance covering the employee, the employee's spouse and the employee's dependent children for specified periods of time. The injury must have occurred while the officer was in the line-of-duty or engaged in an official training exercise. The amendment eliminates the need for the injury to have occurred while the officer was in fresh pursuit or in response to an emergency. (The employer pre-accident makes no reference as to whether the payment for health insurance coverage will effect the average weekly wage determination for the payment of wage loss compensation or whether the employee had received health insurance payable).

6. Safety Program, Heat Exposure HB177 requires certain employers to implement outdoor heat exposure safety programs.

7. Medical Records Requested by Patient – HB1083 Upon request made by a patient or authorized legal representative, a medical service provider (and nursing home facility) must furnish all clinical records in its possession within 14-working days (2 working dates for patients of nursing home facilities). The bill eliminates from such production any records maintained at any licensed facility that references psychiatric care to the patient or records of substance abuse which are governed by §397.501 F.S. Methods for production of these records are described. Amends §440.185(4), F.S., not requiring the filing of medical records with the Department for injured workers when these records relate to psychiatric medical treatments. Amends §456.47(3), F.S. concerning records of telehealth providers making records of psychiatric providers confidential.

8. Declaratory Judgement, Award or Attorney's Fees - SB426 amends § 86.121, F.S. related to declaratory relief actions in regards to insurance coverage issues where coverage is denied by the insurer or the insurer reserves the right to deny coverage in the future. The bill awards attorney's fees to the named insured, omnibus insured and a third party beneficiary of a declaratory judgement in favor of the named insured, named omnibus insured or third party beneficiary or upon the insurer's voluntary dismissal of the claimed denial of coverage or reserved right to deny coverage in the future. If an order is entered in favor of the insurer and against the named or omnibus insured, under a policy contract issued by the insurer, the insurer must be awarded reasonable attorney's fees in favor of the insurer and against the insured or third party beneficiary.

9. Firefighters, Law Enforcement and Correctional Probation Officers, Medical Conditions Caused by tuberculosis, Heart Disease and Hypertension HB269 and SB366 amend §112.18 F.S., concerning the presumptive compensability of medical conditions caused by tuberculosis, heart disease, and hypertension resulting in total or partial disability or death suffered in line-of-duty. Defines "heart disease" as "any organic, or mechanical, or functional abnormality of the heart, its structures, or the coronary arteries." HB 269 redefines the position of "correctional officer" "correctional probation officer" and "law enforcement officer" by referencing §943.10 F.S., which includes many more employees defining "covered employees" than with making reference to specific provisions of §943.10(1) F.S. (law enforcement officers), (§943.10(2)F.S.) (correction officers), (§943.10(3) (correctional probation officers)and §336.102

F.S., a (Fire Service Provider) SB366 does not expand covered employees entitled to presumption of compensability for those medical conditions.

10. Firefighters, Definition of “Cancer” While Determining the Presumption of a Compensable Accident SB66 amends §112.1816 F.S. revising the definition of the term “cancer” to include acute myeloid leukemia concerning benefits payable to firefighters under the Florida Workers’ Compensation Act.

Executive/Administrative Branch of Government

I. 2024 Results and Accomplishments Report/Annual report of the Florida Department of Financial Services, Division of Workers’ Compensation

The Florida Department of Financial Services, Division of Workers’ Compensation recently issued its 2024 Results and Accomplishments Report. This newsletter will focus on those identified medical cost drivers that include (a) medical provider/hospital costs and (b) pharmaceutical costs and (c) penalty assessments. Data is summarized by the calendar year with 2023 being the most recent. The Division of Workers’ Compensation does not comment on the data, allowing stakeholders to formulate their respective opinions about Florida’s workers’ compensation system. Finally, this newsletter will look at developing data and costs that reasonably can be expected subsequent to 2023 for possible use in future business planning.

A. Observations about Health Care Provider Costs and Hospital Costs

1. Payments to health care providers in 2023 have closely equaled payments prior to the Covid pandemic (558,521,638 in 2019 and \$556,627,464 in 2023). The average charge per line item on a health care provider bill increased from \$225 to \$236, while the average paid per line increased from \$94 to \$99 during the same period. These moderate increases are most likely reflective of a stable fee schedule and the impact of contracts between the payer and provider. The legislature increased the health care provider fee schedule, effective January 1, 2025, which will contribute to higher payments to health care providers.

2. Hospital inpatient charges increased during the five-year period from \$829,164,725 in 2019 to \$842,933,311 in 2023. However, the paid amount has decreased by \$110 million from \$452,491,065 to \$342,395,669 during the same time. It is important to note the paid amount in 2021 was \$451,754,259. A new inpatient per diem reimbursement schedule went into effect in the summer of 2022, which also included the elimination of the stop-loss provision. This change may explain the reduction in the total amount paid and the average paid bill (466,768 in 2021 and the reduction in the total amount paid and the average paid bill (\$66,768 in 2021 and \$55,819 in 2023).

3. Outpatient hospital charges have significantly increased from \$888,000,000.00 in 2019 to over one-billion dollars in 2023. However, the paid amount has decreased by \$41 million from \$386,000,000 to \$347,000,000 during the same time. It is important to note the paid amount in 2021 was \$370,532,284 and trending upwards. A modified outpatient

reimbursement schedule went into effect in the summer of 2022, which contains maximum reimbursement allowances for outpatient services. This change may explain the reduction in the total amount paid and the average paid bill \$3,503 in 2022 and \$3,271 in 2023).

B. Observations on Pharmaceutical Costs

4. Physician repackaging of drugs continues to be a major cost driver in the Florida workers' compensation system. In 2023, pharmacies only accounted for 1,905 repackaged drug prescriptions, while physicians accounted for 156,644. The average paid amount for a repackaged drug dispensed by a physician increased from \$289 in 2019 to \$417 in 2023. Total repackaged drug payments to physicians in 2023 were \$65,389,013 compared to \$775,276 to pharmacies. The 2019 paid amounts were \$39,159,410 for physicians and \$1,223,459 for pharmacies. As of this writing, the First District Court of Appeal has not issued its opinion on whether a dispensing practitioner is or is not a "pharmacy" as defined in chapter 440. Should the opinion determine a dispensing practitioner is not a pharmacy, insurers may be able to better control their repackaged drug costs through the authorization process, since injured workers are allowed free and full choice in their selection of a "pharmacy."

C. Observations About Insurer Penalties

5. One of the evolving concerns of the Division as reflected in its Annual Report relates to patterns and practices of industry and claims handling, timely and accurate payments of benefits to injured workers, timely and accurate payment of medical care, timely and accurate filing of required forms and reports and the enforcement of compliance with compensation orders of Judges of Compensation Claims. Over the years, the industry generally meets its statutory and regulatory compliance standards. However, penalties assessed to individual insurers for non-compliance uncovered during audits can vary significantly. The Division conducts on average between 40 and 45 audits per year. Insurers can improve their compliance and reduce potential penalties by specifically examining their processes for medical bill reporting, timely filing Notices of Action or Change, timely filing Notices of Denial or Rescinded Denial, and timely filing Claim Cost Reports.

6. On-site audits to evaluate appropriate claims handling by insurers, self-insureds and third-party administrators have increased since FY 2019/20. Data from the most recent time period (FY 2023-23) reflects 45 on-site audits performed and 6,291 claims files reviewed. Those audits revealed 783 underpaid claim files. The Division reported over \$17,000,000.00 in penalty assessments for FY2023/24 for failure to comply with statutory and regulatory claims handling practices. Additional penalties and compensation were paid to injured workers.

D. Additional Data Possibly Affecting (increasing or decreasing) Future Workers Compensation Costs

Attempting to identify future potential costs for the workers' compensation system requires a continuing review of many relevant issues, including the data provided by the Division and from other sources. Information of relevance in this regard includes, but is not limited to consideration of the following developments:

7. Offsetting increased costs is the reduction in the number of lost time claims and the lost time frequency rate. In 2020, 77,856 lost time claims were reported to the Division compared to 57,436 lost times claims in 2023. Medical and indemnity paid have trended downward.

8. The total premiums recovered to pay full workers' compensation costs without rate increases have fluctuated based upon various factors. Since 2019, more corporate officers have elected to exempt out of the workers' compensation system. (Most are primarily in the construction industry). An unknown number of employers have simply failed to obtain necessary workers' compensation coverage, although a record number of stop-work orders for failing to secure coverage were issued in FY2023/24 producing increased premium dollars for the payment of workers' compensation costs.

9. As indicated in the December 16, 2024 newsletter, 2024 new cases filed for adjudication by workers' compensation judges totaled 1,771, a decrease of 0.9% from FY2022/23. Petitions for Benefits which include new claims and pending claims increased by 5.9%. The relative modest number of petitions for new claim filings would support a possible conclusion that costs associated with litigated cases, including attorney fees, would be reduced in future years subsequent to 2023. A 5.9% increase may suggest otherwise. In addition, as reflected in the December 16, 2024 Newsletter, the data from the Office of the Judges Compensation Claims did not reflect cases pending in administrative litigation related to medical reimbursement disputes. (Litigation under Chapter 120, F.S.) According to the 2024 annual report from the Division, over 10,000 Petitions for Reimbursement Disputes related to medical bills were filed, suggesting that litigation might well increase in the future creating additional costs.

10. As mentioned earlier, total indemnity benefits paid to injured workers in 2023 amounted to \$351,000,000 compared to one billion dollars in total paid for medical payments. The ratio is consistent with previous years; that for every dollar paid for indemnity benefits, insurers pay \$2.85 for medical treatment. Any future cutting of costs should focus on medical payments.

II. Virtual Public Meeting – Florida Workers’ Compensation Healthcare Provider Reimbursement Manual, 2024 Edition, Effective 1/1/2025

The Florida Department of Financial Services, Division of Workers’ Compensation has announced a virtual public meeting that will be held on Tuesday, April 1, 2025, beginning at 10:00 a.m., E.T. The public meeting has been arranged to facilitate dialog among stakeholders pertaining to the policies contained in the Florida Workers’ Compensation Healthcare Provider Reimbursement Manual from the 2024 Edition, Effective 1/1/2025. A copy of the Florida Workers’ Compensation Healthcare Provider Reimbursement Manual can be found on the Division’s website at <https://myfloridacfo.com/division/wc/manuals>.

Judicial Branch of Government

Ortiz v Winn Dixie, Inc.
50 FLW D57b
February 7, 2025

On Motion for Rehearing (original opinion at 48FLW D1107) The claimant suffered a compensable accident that required medical follow-up care and evaluations for possible changes in treatment that would reasonably be necessary from a medical standpoint. The provision of such follow-up care constitutes “remedial attention” having the effect of tolling of the running of the statute of limitations. This tolling effect on the statute of limitations was deemed applicable in this case notwithstanding that the bills from the authorized doctor providing such follow-up care were sent to the claimant’s health insurance company for payment.

Liberty Mutual Insurance Company v Lee et al
50FLW D325
(6th DCA)
February 7, 2025

As this case relates to the amount of the Employer/Carrier’s lien in accordance with Section 440.39(3)(a) Florida Statutes as related to third party claims filed by an injured worker, the Employer/Carrier is entitled to reimbursement based on past benefits paid and future workers’ compensation benefits payable not just the benefits payable at the time of the lien determination.