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May 22, 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**

All bills filed with the Florida Legislature 2025 Session related to Workers' Compensation previously summarized in firm newsletters did not pass. (See Newsletters dated March 18, 2025 and April/May 2025). By Concurrent Resolution extending the 2025 session to establish the State's budget, non-budget bills that had not passed by Friday, May 2, 2025, were “indefinitely postponed” and withdrawn from consideration on Saturday, May 3, 2025. The regular 2025 session continues only for the purpose of considering budget issues. It had been hoped that the budget would have been approved by this late date but unfortunately, this is not the case. Rather than waiting any longer to report the final effect on workers compensation of this year's session, this update is being provided at this time. If necessary, additional information will be provided once the budget is established. Continued budget issues remain unresolved.

In total, 1,304 bills received “indefinitely postponed” actions. 254 bills have been passed and 234 bills were “laid on the table” indicating that their companion measures passed. The following workers' compensation bills directly related to workers' compensation previously summarized were indefinitely postponed and withdrawn from consideration:

SB66 and HB 87 (Firefighter Benefits);  
HB269 and HB366 (Disability Provisions for Firefighters, Law Enforcement and Correctional Officers);  
HB1069 and SB 1426 (Occupational Injury Benefit Plans); and  
HB2181 and SB1522 (Department of Financial Services)

Although no workers' compensation bills passed this year, issues considered this year will more likely than not be the subject of legislation next year. Industry needs to be especially concerned about the issues considered in the Department's Bills (HB2181 and SB1522), as related to the Special Disability Trust Fund (SDTF) reimbursement of future valid claims. The latest available data as of June 30, 2024 estimates outstanding losses in the Fund to be to approximately \$229 million (present value utilizing a 4% discount factor amounts to approximately \$170 million). Unfunded liabilities amount to approximately \$170 Million (present value utilizing a 4% discount factor amounts to approximately \$120 million). Although new claims for reimbursement from the Fund have been eliminated for many years, there remains a significant balance of Funds available for industry entitlements that needs to be protected.

Although the Department's bills were not discussed in Legislative Committees or subcommittees during this year's session, there are strong indications that this issue will be addressed in the 2026 legislative session. For employer/carriers that continue to receive SDTF reimbursements, a significant amount of money is at stake regarding how the remaining SDTF funds will be distributed and collected in the future to cover unfunded liabilities. This is particularly relevant for those employer/carriers that do not have tribute payments. For employer/carriers without SDTF claims, eliminating Fund reimbursements will directly affect the rate assessments that fund the SDTF, with no expectation of future reimbursement rights from the SDTF. (There are no Fund reimbursement entitlements for dates of accident post 1/1/98). In summary, there are valid arguments both for and against eliminating SDTF reimbursements. Even if future reimbursements are discontinued, careful attention must be paid to the elimination process outlined in the Department's 2025 bills. Additionally, the industry should plan in advance once the reimbursement process is established to ensure that a fair and equitable amount is received for any Fund claims. This will help finalize reimbursements efficiently and promptly. (Reimbursements will be paid on a "first come, first served" basis, encouraging entitled employer/carriers to submit their claims early to ensure they receive reimbursement.) (The final reimbursement amount will be paid on a "first come" basis encouraging entitled employer/carrier's to "First in Line" to receive reimbursement)

## **Judicial Branch of Government**

Sapp v Sims Crane and Equipment Co/Bridgefield Casualty Insurance Co.

50 FLW D1019

(Fla. 1<sup>st</sup> DCA 2025) - In accordance with §440.211, FS, the parties entered into a collective bargaining agreement (CBA) divesting the Judge of Compensation Claims (JCC) of jurisdiction to adjudicate workers' compensation claims. Court determined that this agreement legally divested the JCC of jurisdiction to decide such issues that the Court determined that the parties had mutually agreed to the CBA and the employer/carrier had not waived its right to object to the non-jurisdiction of the JCC.

## **Executive/Administrative Branch of Government**

Department/Division Audits of Employer/Carrier Claims Files "Ordering" Additional Compensation Payable to Injured Workers Including Penalties - One of the latest trends being witnessed in the Department/Division's oversight of benefits being paid injured workers involves requiring the Employer/Carrier to pay compensation/penalties (to the injured worker and to the Division) in situations where there is no legal jurisdiction to do so. One identified case involved a factual scenario in which in 2012 the parties through their legal counsel stipulated to the injured workers AWW. Based on that stipulation, the Employer/Carrier paid permanent total benefits. In an audit, it was determined that the AWW needed to be amended requiring the payment of benefits based on this amended sum including the payment of back benefits plus penalties. As a part of regular audits, cases have arisen in which the Division has ordered the payment of benefits when indemnity is disputed, appropriate denials have been filed and the injured worker is represented by an attorney.

Over the past few years, the Division of Workers' Compensation has worked to educate carriers on employer and carrier responsibilities in the workers' compensation system. These responsibilities include many things, not the least of which is timely filing First Reports of Injury, Wage Statements and benefit payments. Carriers must also timely file, rescind or amend DWC-4 Notices of Action/Change and DWC-12 Notices of Denial when circumstances surrounding medical or indemnity benefit payment or authorization has changed. The Division audits carrier performance in this regard and has statutory and rule-making authority to sanction employers and carriers with administrative penalties for non-compliance. Employers and carriers should routinely self-police their compliance with DWC rules in this regard.

The Division also has an Ombudsman created under the law to informally assist injured workers and employer/carriers to negotiate and attempt to resolve benefit disputes. However, the Law provides no authority to the Ombudsman to Order the employer/carrier to authorize or pay benefits. While the Law provides the Division with exclusive authority to resolve medical reimbursement disputes for authorized medical treatment, only the Judge of Compensation Claims has legal authority to resolve disputes between a claimant and carrier surrounding compensability, authorization or entitlement to benefits. The Division has historically avoided inserting itself into benefit disputes because of this lack of authority, particularly where injured workers are represented by counsel. While the Division may feel it is pursuing a noble goal when it Orders payment of indemnity benefits, it is our position that they lack the authority (jurisdiction) to do so.

We believe the carriers can challenge findings by the Division determining compensation is payable when the Division issues its preliminary and final audit reports. Also, during the audit, the Division issues clarification sheets to carriers when they discover a potential erroneous claims handling occurrence. The carrier can explain its decision on the clarification sheet.

If you have any questions or experience regarding carrier obligations and DWC authority to enforce portions of the Workers' Compensation Law, please do not hesitate to contact one of our attorneys, or contact Ralph Douglas in our Tallahassee Office

The Legislature finds that the indefinite existence of the fund creates administrative costs for the administration of a decreasing number of claims. The Legislature further finds that the fund is maintained by assessments on all carriers.