

Case Law Update

[FAMILY AND MEDICAL LEAVE ACT] Nevada Department of Human Resources, et al., v. William Hibbs, et al., 16 Fla. L. Weekly Fed. S291a (U.S. May 27, 2003): Hibbs sued Nevada Department of Human Resources under the Family Medical Leave Act. The Federal District Court awarded the employer summary judgment on the ground that the FMLA claim was barred by the Eleventh Amendment. Hibbs appealed, and the United States intervened under 28 U.S.C. §2403 to defend the validity of the FMLA's application to the states. The Ninth Circuit reversed, and the employer appealed to the U.S. Supreme Court, which affirmed. The U.S. Supreme Court found that Congress correctly exercised its power under section 5 of the Fourteenth Amendment to abrogate states' Eleventh Amendment immunity from suit in federal court. Employees of a state may recover money damages in federal court for the state's failure to comply with the family-care provision of the Family and Medical Leave Act. The damages recoverable are strictly defined and measured by actual monetary losses and the accrual period for back pay is limited by the FMLA's 2-year statute of limitations.

[WRONGFUL DEATH; WORKERS' COMPENSATION IMMUNITY; SOVEREIGN IMMUNITY] Sierra v. Associated Marine Institutes, Inc., 28 Fla. L. Weekly D1423 (Fla. 2d DCA June 18, 2003): Plaintiff's husband worked as a counselor for a residential juvenile detention camp. He was murdered by two of the camp's residents. His wife filed a wrongful death suit against the camp, BCWI. BCWI claimed immunity under workers' compensation and sovereign immunity. The circuit court dismissed the action. The appellate court reversed, stating that Florida recognizes an exception to W/C immunity where an employer has either exhibited a deliberate intent to injure or when the employer's actions are "substantially certain" to result in injury or death and that dismissal under sovereign immunity was also improper. Even if the defendants were agencies of the state, Florida Statute §768.28(9)(a) states that agents of the state are not immune from liability when their actions are committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

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Claim Data and Information Now Online!

One of the most important tools in reducing claims and the costs associated with claims is information. Information is everything in reducing the frequency of claims (i.e., the most frequent type of claim(s) occurring within your organization; the most costly types of injuries occurring; the causes of the injuries; and where to place your limited resources to achieve the best results).

Risk Management provides you this information through Corporate Systems Knowledge Net (CSK Net). CSK Net is Risk Management's database of claim information you can access through the Internet. It is an interactive system that allows you to run set reports or create your own queries to uncover the precise information you need to help manage claims and claim dollars. You can also review information about your open, pending claims. Risk Management provides each state agency, free of cost, one license to access its data. This license is given to each Safety Coordinator. Safety Coordinators are required by Florida Administrative Code (4H-2.007 Loss Prevention Programs) to monitor and correct any erroneous information within the database.

If you need information from the CSK Net system, contact your agency's Safety Coordinator for assistance. If you are unsure of whom to contact in your agency, call our Risk Services section at (850) 413-3121 for assistance, or e-mail us at RiskServices@dfs.state.fl.us



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Workers' Compensation Legislative Update

The Florida Legislature passed Senate Bill 50A and substantially changed the Florida workers' compensation law. The changes, unless otherwise stated in the act, became effective October 1, 2003. Below is a summary of the portion of the legislation that will most affect how our program handles workers' compensation claims in the future.

Coverage (440.09): Conditions are only compensable if the accidental, compensable injury is more than 50% responsible for the condition (major contributing cause).

Mental or nervous injuries (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 (this was moved from 440.02(1), Definitions.) Section 440.093 was added to address mental or nervous injuries. It states that the physical injury must be and remain the major contributing cause and limits the payment of permanent benefits for mental or nervous injury to six months following date of maximum medical improvement for the physical injury.

Medical Services (440.13):

Chiropractic Care: Increases treatment limits from 18 to 24 treatments or from eight to 12 weeks beyond date of the initial chiropractic treatment (whichever occurs first).

Independent Medical Examinations (IME): The employer and employee shall be entitled to only one IME per accident and not one IME per medical specialty. The party requesting and selecting the IME shall be responsible for all expenses associated with said examination.

Managed Care (440.134): Grievance means a written complaint, other than a petition for benefits, filed by the injured worker pursuant to the requirements of the managed care arrangement, expressing dissatisfaction with the insurer's workers' compensation managed care arrangement's refusal to provide medical care or the medical care provided.

Determination of Pay (440.14): Changed language from "the time of injury" to "the date of the accident." Average weekly wage is determined by wages from the 13 calendar weeks before the date of accident, excluding the calendar week during which the accident occurred. Also, "substantially the whole of 13 weeks" has been changed from 90 percent to 75 percent.

Compensation for Disability (440.15):

Permanent total disability (PTD): Removes the "otherwise qualify for social security disability" as a qualifier for PTD eligibility. Entitlement to PTD benefits terminate at age 75 unless the accident occurred on or after the employee reaches age 70, benefits are then payable for five years after determination of PTD status. PTD supplements are reduced from 5 percent to 3 percent and are not payable beyond age 62.

Permanent impairment benefits: Benefits are paid biweekly (changed from weekly) at the rate of 75 percent (changed from 50 percent) of the employee's average weekly temporary total disability benefit. Permanent impairment benefits are limited to 1 percent for permanent psychiatric impairment.

Compensation for Death (440.16): Funeral expenses are increased from \$5,000 to \$7,500. Compensation for eligible dependents is increased from \$100,000 to \$150,000.

Attorney fees; costs (440.34): Limit claimant attorney fees to a guideline fee in nearly all situations. The guideline fee is 20 percent of first \$5,000 of benefits secured, 15 percent of next \$5,000 of benefits secured, 10 percent of remaining benefits secured for the 10 years following filing of claim, and 5 percent of the benefits secured after 10 years. The judge of compensation claims may approve an alternative attorney fee not to exceed \$1,500 only once per accident, on a maximum of \$150 per hour, if the JCC expressly finds that an attorney fee based on benefits secured fails to fairly compensate for disputed medical-only claim.



Workers' Compensation Frequently Asked Questions

1. Can my employer fire me if I am unable to work and am receiving workers' compensation benefits?

No, the law does not permit you to be fired in retaliation for filing, or attempting to file, a workers' compensation claim. However, the workers' compensation law does not require your employer to hold your position while you are injured.

2. Do I have to settle my case?

A settlement is when the company tries to negotiate a lump-sum payment in exchange for the employee signing a release giving up rights to future payments. Settlements are not mandatory but are allowed if a workers' compensation judge approves them. Before signing a settlement agreement, it is important that you understand what future benefits you may be giving up because settlements are final and difficult to change.

3. Will my family receive benefits if I am killed on the job?

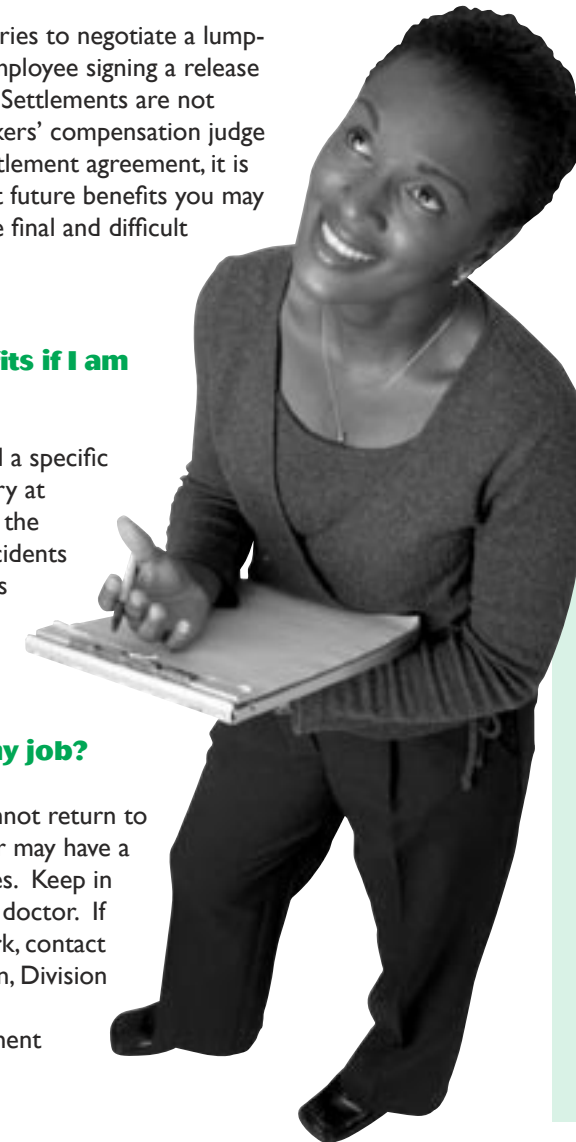
Your eligible dependents will be paid a specific amount every two weeks. Your salary at the time of the accident determines the amounts of these payments. For accidents on or after 10/01/03, these payments will not exceed \$150,000 plus up to \$7,500 for funeral expenses.

4. What if I cannot return to my job?

If your doctor indicates that you cannot return to your former position, your employer may have a different position within your abilities. Keep in touch with your employer and your doctor. If you are still unable to return to work, contact the Florida Department of Education, Division of Vocational Rehabilitation at (850) 488-3431, for free re-employment services.

5. Where do I get help if I think Risk Management or my employer is not treating me fairly?

Call the Employee Assistance Office (EAO) of the Division of Workers' Compensation at 1-800-342-1741 for help. If the EAO cannot help resolve the problem, you have a right to file a Petition for Benefits and have your case heard before a judge of compensation claims.



Comments, Questions...

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