

**PERFORMANCE AND BILLING GUIDELINES**  
**FOR DEFENSE ATTORNEY FIRMS HANDLING**  
**BUREAU OF STATE EMPLOYEES' WORKERS COMPENSATION CLAIMS**

**INTRODUCTION**

The Division of Risk Management, Bureau of State Employees' Workers Compensation Claims is responsible for administering the worker's compensation program for all departments of the State of Florida and their employees. As such, all workers' compensation claims involving state employees, state volunteers, and other statutorily mandated persons are reported directly to the Division of Risk Management from the various state agencies.

**PHILOSOPHY**

It is the philosophy of the Division of Risk Management, Bureau of State Employees' Workers Compensation Claims that the Florida Workers' Compensation Law is intended to be a self-executing program. Therefore, it is this Division's primary objective, in administering workers' compensation benefits to State workers, to assure that an injured worker receives prompt, but appropriate payment of benefits pursuant to Florida law. Given this philosophy, the vast majority of claims are handled without difficulty. However, there are claims where the injured worker obtains representation by an attorney for one reason or another. In such cases and in cases where a legitimate defense should be asserted on behalf of the State, the Division assigns the claim to a Defense Attorney Firm (hereinafter referred to as Firm). The instructions and guidelines as set forth below are intended by the Division of Risk Management to be read and followed by the Firm receiving workers' compensation defense assignments.

**I. ASSIGNMENTS TO DEFENSE ATTORNEYS**

When the Division of Risk Management assigns a claim file to a Firm, the Workers' Compensation Specialist (hereinafter referred to as Specialist) that is responsible for the file will send a complete copy of the claim file with an appropriate cover letter summarizing the claim and any outstanding issues. The Specialist will routinely forward to the Firm copies of any additional material received on the claim file.

The Firm does not have authority to reassign a claim to another law firm for any reason, nor does an Assigned Defense Attorney (hereinafter referred to as Attorney) have the authority to take a claim from the assigned firm, should the Attorney leave the law firm to which the claim was originally assigned.

**II. ACKNOWLEDGMENTS**

Immediately upon receipt of a workers' compensation claim file assignment, the Firm shall acknowledge its receipt in writing to the Specialist. The Firm shall identify in the acknowledgement the Attorney within in the firm that will be assigned the claim file.

### **III. SUPERVISION OF CLAIM**

The Risk Management Specialist has the primary responsibility for the proper handling of a claim assigned to the Firm. Thus, the Attorney should communicate and work directly with the Specialist at all times. The Division of Risk Management retains full authority over settlement, compromise, settling the amount of disability, taking appeals, etc.,

### **IV. INVESTIGATIONS**

Prior to assigning a claim to the Firm, the Specialist is responsible for conducting a thorough and detailed investigation in the handling of each claim. When the Firm receives an assignment, the Firm should receive a well-investigated and documented file. Upon the Attorney's prompt review of the file, should it be determined that further investigation is needed, the Attorney should make an immediate and detailed request for the same directly to the Specialist. With the exception of the defense's deposition of the claimant, all other discovery must first be authorized by the Specialist.

### **V. DEFENSE ATTORNEY PERFORMANCE GUIDELINES**

A. The Firm is expected to communicate directly with the designated Specialist throughout the duration of the case. The Specialist is to be copied on all correspondence and material received or sent by the Firm.

B. At all times during the Attorney's handling of a claim for the State of Florida, it is expected that the Specialist will be fully informed of the Attorney's progress and of any changes in the complexion of the case which may materially affect the outcome of the case, including but not limited to matters involving a substantial change in defense strategy, an/or significant additional factual discovery, an offer of settlement by claimant or claimant's attorney, the Attorney's prolonged illness, a reassignment by the Firm of the case to a different attorney within the Firm, etc.

C. Upon receipt of the assignment, the Attorney is expected to immediately review the claim file and to advise the Specialist in writing if there is a deficiency in the benefits or whether benefits are being paid properly. This task should be accomplished within two or three days of the file's receipt by the Firm, but in no event shall it take longer than 10 calendar days of the receipt of the file by the Firm. Upon receipt of the file and within the same ten-day maximum time frame, the Attorney shall, also, discuss and develop an agreeable plan of defense with the Specialist. Any significant departure from the agreed plan thereafter must be discussed prior to the change with the Specialist.

D. Immediately upon receipt of the assignment, the Firm must file a Notice of Appearance with the Office of the Judges of Compensation Claims. On the Notice of Appearance, the Attorney must make certain that the Division of Risk Management is indicated as the carrier.

E. Immediately upon receipt of the initial petition for benefits the Attorney is expected to arrange for the taking of the claimant's deposition. The taking of the claimant's deposition should be accomplished within 21 days of receipt of the initial petition for benefits. If this cannot be accomplished, the Attorney must immediately advise the Specialist. Among the purposes for taking the claimant's deposition is to determine the facts and circumstances surrounding the claimant's condition, to discover validity of issues contained in the petition for benefits, to discover any problems or complaints the claimant may have, and to make certain that lawful benefits are

being paid based on the claimant's correct average weekly wage, compensation rate and concurrent employment.

F. Immediately after taking the claimant's deposition or any other deposition, the Attorney is required to submit a report to the Specialist summarizing the findings. In no event should the Attorney's report be submitted later than 10 days after the taking of the deposition. Do not submit a copy of depositions to the Specialist unless specifically requested to do so by the Specialist.

G. In addition to the above reporting requirements, periodic status reports must be submitted in writing to the Specialist. The Specialist will determine the frequency of these reports, but again, the Attorney is expected to report any significant development in the case promptly and regardless of the time interval before the next scheduled progress report.

H. Throughout the duration of the case, the Attorney is expected to cooperate fully with the Specialist in discussing and establishing a specific course of action, which will be followed in defense of the State of Florida. Given the high volume of claims processed on behalf of the State, the Specialists with the Division of Risk Management are highly experienced in the prompt and efficient handling of workers' compensation claims. When handling a unique case or in coping with a novel procedure, the Attorney shall not embark on a different course of action or defense strategy without first discussing the matter with the Specialist assigned the file.

I. The Attorney should begin developing defenses at the earliest possible date in order to be fully prepared for any hearing. Continuances should be avoided and are strongly disfavored. If the Attorney plans to request a continuance, an explanation must be given to the Specialist.

J. At least 10 days before a hearing, the Attorney must submit a narrative report to the Specialist which indicates the facts and issues to be decided at the hearing, an outline of the defense's position, the Attorney's professional opinion of the anticipated outcome, and any recommendations concerning settlement etc.

K. Within 10 days following a hearing, the Attorney must submit a narrative report to the Specialist as to what transpired at the hearing, and where appropriate, an evaluation of the expected outcome.

L. Items of special interest on every claim which the Attorney is to consider include average weekly wage, compensation rate, concurrent employment, type of compensation due, compensation being paid, maximum medical improvement date, disability rating, work status of the employee, education and work experience, medical treatment being provided, medical examination needed, rehabilitation needed, subrogation, whether the claim is a Special Disability Fund claim, and whether the employee is receiving the proper benefits in a timely manner.

M. Where the claimant is still working for the State, the Division of Risk Management will not normally "wash out" or settle the claim. However, there are situations where it is in the State's best interest to settle issues and the Attorney is expected to maintain a continuous assessment of the case and to promptly advise the Specialist whenever settlement appears to be in the State's best interest. No offer of settlement may be made without the prior approval of the Specialist.

N. Whenever the Specialist requests a specific action on the Attorney's part that is within his authority or responsibility within a specific time frame, the Attorney is expected to respond accordingly and within the time frame established. If for any reason the Attorney is unable to

accommodate the Specialist's request, or if the Attorney anticipates a delay in responding, the Attorney must contact the Specialist at once and explain the reasons for not complying with the request.

O. The Specialist is expected to pursue all Special Disability Fund (SDF) claims. The Attorney is not expected to handle routine SDF matters. Under no circumstances should the Attorney request the SDF to send reimbursement checks to the Firm or to the Attorney. All reimbursement checks must be made payable to the Division of Risk Management and mailed directly to the Division.

P. At least 10 days before a scheduled mediation, the Attorney must submit a narrative report to the Specialist which indicates the facts and issues to be discussed at the mediation, an outline of the defense's position, the Attorney's professional opinion of the anticipated outcome, and any recommendations concerning settlement etc.

## **VI. DEFENSE ATTORNEY BILLING GUIDELINES**

A. Billing for Firm services rendered must be made at three-month intervals. The statement for services rendered must specify in detail the actual tasks performed by the Firm. All tasks comprising the Firm's invoice must fall clearly within the bounds of the defense strategy or course of action previously agreed to by the Attorney and the Specialist. The Division of Risk Management is not authorized to pay a Firm for activities voluntarily undertaken by the Firm, which have not been previously approved by the Specialist.

B. By the Firm's agreement to handle the defense of State workers' compensation claims, the Division of Risk Management accepts the Firm's representation that the Attorney possesses a fundamental working knowledge of Florida Workers' Compensation Law, including knowledge of routine procedures, relevant statutes and rules, and recent case law. Therefore, time expended by the Attorney for general research is not billable.

C. The Firm's agreed defense strategy with the Specialist must contemplate all attorneys within the firm who will associate or otherwise assist in the handling of the case. The Specialist must first approve the extent and nature of involvement by each attorney. Time expended by attorneys who were either not identified to the Specialist by the Firm or who exceeded their agreed involvement in the case is not billable.

D. All expenses incurred by the Attorney for travel, depositions, exhibits, witnesses, etc., must first be authorized by the Specialist. Reimbursement for travel expenses is limited to the terms and rates established in Section 112.061, Florida Statutes. Please be sure to include a detailed itemization of all expenses incurred and to include copies of tickets, receipts, travel itinerary, rental car invoices, etc.

E. The Firm's statement for services rendered must indicate the date each task was performed, the specific nature of the task, and the length of time spent by the Attorney performing the task in tenths of an hour or in actual minutes.

F. Routine office overhead expenses, such as routine copying and postage, clerical and secretarial support services, library/resource needs, etc., are expected to be included in your hourly contract rates. Non-routine expenses, such as long distance telephone calls, unusual or special mailing and unusual or special reproduction must be clearly indicated and justified in your invoice.

G. The Firm's invoice must be submitted to the Specialist. The Firm's invoices for services rendered must reflect that all tasks were performed during the effective period of your legal service contract with the Division of Risk Management. Likewise, all fee payments for tasks performed will be based on the hourly rate in effect at the time the task was actually performed. Payment will be made to the Firm as its name appears on the applicable contract with the Division of Risk Management. At all times during the Firm's rendering of services pursuant to legal service contracts with the Division of Risk Management, the Firm is expected to maintain on file with the Division a current resume of all attorneys who will associate or otherwise assist in the handling of any case assigned hereunder. Questions concerning Workers' Compensation, which requires the execution of a new contract with the Division should be addressed to the Chief of the Division's Bureau of State Employees' Workers' Compensation Claims.

The attached memorandum dated March 13, 1991 is clarification of billing guidelines as to costs reimbursement.

## MEMORANDUM

**TO:** All Division of Risk Management Contract Law Firms  
**FROM:** R. J. Castellanos, Director, Division of Risk Management  
**SUBJ:** Clarification of Billing Guidelines as to Costs Reimbursement  
**DATE:** March 13, 1991

You will notice that both Exhibit A and B in the contract indicate that long distance telephone calls must be clearly indicated and justified in your bill. We would ask that your billing include, at a minimum, the date of the call, the phone number called, the person called, the purpose of the call, and the amount. That information should then tie back into your fee billing. For example, if you charged us .2 hours for a phone call to Risk Management on January 10, we should then be able to look at the cost portion of your billing and also see a charge for a long distance phone call to our office on that date. Some law firms are now using computer assistance in tracking their long distance phone calls and have a system which allows them to "capture" those phone calls on their bill for a particular case. We will accept such a computer generated listing in lieu of copies of the actual phone bill, but only if the above detail is included so as to provide sufficient confirmation that the charge was properly incurred on our behalf. Charges for long distance calls should be stated as follows:

| <u>Date</u> | <u>No. Called</u> | <u>Purpose</u>                       | <u>Amount</u> |
|-------------|-------------------|--------------------------------------|---------------|
| 12/28/90    | 904/488-5073      | L. Sharp-Discuss settlement proposal | \$4.95        |

Copying or reproduction charges is another area that has caused some problems. On liability claims, as provided by Exhibit A, we only will pay copying charges if reproduction is approved in advance by our specialists and reproduction is made by an outside vendor. In workers' compensation cases, our contract only contemplates unusual or special reproduction such as when copies of medical records need to be made for the court file and our file. This contemplates the reproduction of a single set of materials such as voluminous hospital records, and contemplates reproduction at a single point in time, not the reproduction of various different sets of records obtained at various times during the course of the litigation. It does not contemplate copying charges for sending us copies of pleadings or motions, or what should otherwise be considered routine copying. We provide for reimbursement for copying charges to law firms because we recognize that it would be an unfair burden for a firm to absorb the cost of having to reproduce, for example, a 250-page set of hospital records that may need to be sent to us and to the court or to other offices. We therefore allow reimbursement in order to offset this unusual type of cost to the law firm. However, we also only expect to pay a fair and reasonable copying charge, and not \$.50 or \$1.00 per page. Therefore, in an effort to clarify our reimbursement procedures, in the future we will only pay for copying charges as follows:

1. We will reimburse your firm at a rate of no more than \$.20 per page.
2. We will not pay for any copying involving a document or set of medical records, including hospital records, that do not exceed 100 pages.
3. Your charges for copying must include a statement as to what was copied, the date on which the copies were made, the number of copies, and your firm's charge per page, which should not exceed \$.20 per page.

This item should be billed on your statement for services in the following format:

1/28/91           Copies of records from Sarasota Memorial Hospital  
                      200 pages @ \$.20.....\$40.00

If we cannot clearly tell from your statement that the charges were for unusual or "bulk" reproduction of a single document or related series of documents, as opposed to just an accumulation of pleadings and motions and other documents that were copied at a single time, we will be unable to reimburse you for those charges.

Please keep in mind that you are helping the specialists process your billings more quickly and efficiently if you adhere to the provisions of our contract when you prepare your statements for services, and when you provide enough information to enable the specialist to confirm that the billing for costs is within the contract guidelines. It is in the best interest of your firm and our program to avoid delays and substantial expenditures of administrative time in pursuing matters involving relatively small amounts of money being requested as cost reimbursement. In our situation we have no choice but to pursue these matters since besides having other state agencies who review the appropriateness of our reimbursement payments, we also have a separate accounting section which will not approve these payments if they are not clearly within the guidelines of the contract and supported by copies of receipts, invoices, and other supporting documentation reflecting that your firm incurred these expenses on our behalf.

Any expenses that you feel may not be clearly covered by our contract, and therefore unusual but which may be necessary because of emergency circumstances should be discussed and cleared with our specialists in advance, and a notation should be made to that effect in your billing. This will avoid any questions as to the appropriateness of an expenditure if the bill is subsequently reviewed by another agency. For example, delivery of documents by Federal Express or other courier service is not a routine expense, and would be considered an "unusual or special mailing" expense under our contract. Since this expense must be clearly indicated and justified in your bill, you should note on the bill that approval from the specialist was obtained prior to incurring this expense.

Fax charges will not be paid unless the Division requests that a document be faxed or unless the contract attorney can document the necessity of faxing a document as opposed to mailing.

I hope this information will provide some guidance in this area, and should you have any questions, please feel free to call my office.

RJC