

Case Law Update

Bradshaw v. School Board of Broward County, 20 Fla. L. Weekly Fed. 653 (11th Cir. May 15, 2007). This case discusses the relationship between the damages cap under Title VII and the damages cap under 768.28 invoked by the Florida Civil Rights Act, Chapter 760, F.S.

In this case the plaintiff brought a sexual harassment claim under both the Florida Civil Rights Act and Title VII. The jury returned a verdict for the plaintiff in the amount of \$400,000. The trial court entered a judgment for \$400,000, reasoning that the plaintiff was entitled to \$300,000 under the Title VII cap and \$100,000 under the 768.28 cap. The appellate court disagreed and remanded with instructions that judgment should be entered for \$300,000 reasoning that "federal law conclusively permits the plaintiff to recover at least \$300,000, but at the same time Florida law does nothing to extend the judgment; the \$100,000 limit has already been reached and Florida has not obligated the school board any further."

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Alex Sink

Chief Financial Officer, State of Florida

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Risk Management Property Section Expands Training Opportunities

The Property Section of the Bureau of Property, Financial and Risk Services has taken the opportunity created by recent hurricane activity and the resulting increased interest in insurance coverage and claims to provide expanded training opportunities to the state agencies that it serves.



We have made a commitment to offer biannual property insurance training sessions to address the coverage and claims process needs of our participating State Property

Agencies. The growing concern over adequate coverage prior to, and the complex claims process involved in the aftermath of catastrophic losses, creates a profound need for precise information and expanded training. It is apparent that all parties involved in the protection of state property have learned a great deal from the intensive hurricane seasons of 2004 and 2005. It is with these lessons learned that we now approach our training sessions.

The Property Section hosts two, two-day insurance training sessions each year, in May and November. The May session emphasizes the claims process to help prepare the agencies for

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Division of Risk Management
Trilly Lester, Division Director
Pamela Martin, Assistant Director

State Liability Claims Bureau
Ray Williams, Chief

State Employees' Workers' Compensation Claims Bureau
Denzil Weimorts, Chief

Property, Financial & Risk Services Bureau
Shannon Segers, Chief

Managing Editor
Wanda Brazell

Layout and Design
DFS Publications Unit



the upcoming hurricane season. The November session is weighted with coverage information to assist the agency in creating and securing adequate insured values well in advance of the hurricane season.

To expand the base of information in our training sessions, we have not only utilized the talents of the entire Property Section staff, we've also begun to incorporate presentations by guest speakers from other insurance-related functions and agencies.

At the recent May training, we invited representatives from the Department of Management Services to speak on their agency's various policies for many of the areas of coverage not provided by Risk Management's policy. Also on the agenda was our own Financial Section staff. They presented the Premium Process and fielded many relevant questions. With FEMA's presence in our catastrophic losses, FEMA's relationship with our program was touched upon. What we discovered through participant feedback was a need to expand this area of related information. We intend to answer that need.



Additional points highlighted in our expanded property training included:

- Examination of the state's flood policy.
- Reiteration of statutory requirement to submit lease language for approval prior to execution of any leases which involve building coverage under our program.
- Explanation of the new claim payment process.
- Clarification of specific time constraints for accepting and paying claims.
- Announcement of a separate, hands-on training for our computer-generated e-forms.

Risk Management's Property function is to provide appropriate coverage and to assess, adjust and pay claims against damaged, state-owned property. We see our role in the communication of ever-expanding and precise information pertaining to the process of property loss as equally important to our primary function. We are very pleased to have such a fine group of Agency Property Coordinators who are willing to participate and share in the common benefits of this effort.

The Weekly Temporary Total Disability/Temporary Partial Disability Report and You

If you are the designated person in your agency, division, bureau or section, you get an e-mail from someone at the Division of Risk Management every Monday informing you of TTD/TPD payments during the prior week. What is this really for, and what should you do with it?

Let's get down to basics. What is TTD/TPD? Florida statute 440.15 (2) states the following about temporary total disability:

In case of disability total in character but temporary in quality, 66 2/3 percent of the average weekly

wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks.

440.15 (4) addresses temporary partial disability and states;

In case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn post injury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the pre-injury average weekly wage with the salary, wages, and other remuneration the employee is able to earn post injury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the post injury employer's work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment.

Risk Management provides the TTD/TPD report to the individual agencies for various reasons; most importantly to provide you with information on which employees were paid benefits. You can use the report to track the first 10 weeks of indemnity paid to a particular employee and then reconcile this to the bill you will get for the initial 10 weeks. You also can use the report to keep up accurately with payroll on employees that are currently out on workers' compensation. The report is easy to read; each benefit type is identified by a particular pay code, and each employee is identified separately. The report also will point out the date the check was sent as well as the date range for which the employee is being paid. A sample report will look like this:

State of Florida TTD/TPD Payments during Prior Week STARS

Location (level C): 8305 - JACKSONVILLE LAB

Claim Number	AWW	Accident Date	Employee Name	Payment Type	Service From	Service To	Trans Date	Trans Amount
03 -83000942	466.68	4/6/2004	Claimant #1	3100 - TEMPORARY TOTAL	04/16/2007 - 04/29/2007	05/01/2007	622.24	
05 -83000307	474.91	10/6/2005	Claimant #2	3100 - TEMPORARY TOTAL	04/20/2007 - 05/03/2007	05/01/2007	633.20	

Total By Location (level C) : 2 Transaction(s) 1,255.44

If you encounter any problems with the report or would like any additional information about the report you can reply to the email you receive with the report. If you have questions as to why an employee is being paid, or any information about the claim, you should contact the adjuster assigned to the claim. A list of claim assignments can be found on our website: <http://www.fldfs.com/Risk/WCC/index.htm>

Comments and Questions...

Claims Communicator

Florida Department of Financial Services
Division of Risk Management
200 E. Gaines Street
Tallahassee, FL 32399-0336

Phone: (850) 413-4700 Fax: (850) 921-9097

Alex Sink
Chief Financial Officer
State of Florida

