



Workers' Compensation: Returning to a broken system

In 2003, Florida's workers' compensation system was in crisis. Premiums ranked among the highest in the country, fueled by an attorney's fee provision that not only assured all claimants' attorneys a reasonable fee, but tempted them with the prospect of a windfall.

To restore the system's efficiency and protect the state's economy, the Legislature and Gov. Jeb Bush reformed Florida's workers' compensation system, limiting both overall attorney compensation and the recovery of prevailing-party attorney's fees.

The reforms worked, resulting in significant decreases in the cost of workers' compensation insurance for Florida's small businesses and employers.

However, in October, the Florida Supreme Court issued its ruling in *Murray v. Mariners Health*, eliminating the caps on attorneys' fees set forth in the 2003 reforms. The case challenged the constitutionality of the reforms primarily the limits the new law put on how much an attorney can be compensated for pursuing workers' compensation claims.

This ruling will have significant impacts on Florida's workers' compensation insurance system as a result of removing a provision in the law that has largely been credited for the six consecutive decreases in workers' compensation rates in the five years since the 2003 reforms.

Florida Insurance Commissioner Kevin McCarty has even credited the attorneys' fee provisions with helping to lower rates noting in a recent statement, "The reduction of attorney participation in workers' compensation cases has been cited as one of the significant causes of the reduction in rates since the 2003 legislative reforms," McCarty said. "Limitations on attorney fees have helped Florida employers to realize a significant savings on their workers' compensation insurance."

Since the passage of the reforms, Florida went from having some of the highest workers' compensation rates in the nation to having the 10th lowest workers' compensation rates in the country. Now, as a result of the Supreme Court ruling Florida's workers' compensation rates will once again see significant increases.

On November 14, the state's rate making entity, the National Council on Compensation Insurance (NCCI) submitted its first rate increase in years, asking the Office of Insurance Regulation (OIR) to approve an immediate 8.9 percent rate increase after six consecutive decreases resulting from the 2003 workers' compensation reforms.

Overall, NCCI estimates that it will take two years for the state to realize the full impacts of the Murray ruling. According to NCCI's filing, over the next two years rates will need to be increased by 18.6 percent. These increases will result in \$500 million in higher costs on Florida businesses over the next two years.

The claim that the 2003 law was unconstitutional was fundamentally flawed for several reasons:

- Both the text and legislative history of current law establish the Legislature's intent to repeal the discretionary factors that allowed for attorneys to be awarded fees in significant excess of the actual benefits awarded to an injured worker.
- The constitutional attack on the 2003 reforms were flawed because there was no established constitutional standard for the determination of attorneys' fees.
- The Legislature has permissibly limited the extent to which fees may be shifted to an employer-carrier, the limit on overall attorney compensation preserves a claimant's benefits and did not violate equal protection.
- The statutory limit has also controlled costs and reduced premiums.
- The limits on attorneys fee and did not implicate the right of access to the courts.
- The Supreme Court's own rules and decisions recognize the Legislature's authority to regulate attorney compensation.

The Legislature must take action and restore the attorney fee provisions limiting how much plaintiffs' attorneys can collect for pursuing workers' compensation cases. The law must ensure that attorney's fees are based solely on a percentage of the actual benefit awarded to the injured worker.

Preserving the attorney's fee limits established by the 2003 workers' compensation reforms will be key to ensuring the continued affordability and availability of workers' compensation for Florida's small businesses and employers.

The Florida Justice Reform Institute's mission is to fight wasteful civil litigation through legislation, promote fair and equitable legal practices, and provide information about the state of civil justice in Florida. To facilitate these goals, the Institute employs research and advocacy in support of meaningful tort reform legislation.