Florida Workers Compensation: A Guide for the HR Professional

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Session Objectives

• Workers Compensation Basics

• Florida Reforms, Cost Trends, and Challenges

• The Patient Protection and Affordable Care Act – Potential Implications on Workers Compensation
Workers Compensation Basics
## The Workers Compensation Principle

<table>
<thead>
<tr>
<th></th>
<th>No-Fault System</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Worker doesn’t need to demonstrate employer negligence</td>
</tr>
<tr>
<td></td>
<td>Employee only has to prove the injury is “work-related”</td>
</tr>
<tr>
<td></td>
<td>Employer cannot use special defenses such as contributory negligence</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Exclusive Remedy</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Statutory benefits provided by the program are the employer’s only liability to the employee for the workplace injury</td>
</tr>
<tr>
<td></td>
<td>Benefits are prescribed by law</td>
</tr>
<tr>
<td></td>
<td>Employees cannot bring tort suits against employers</td>
</tr>
<tr>
<td></td>
<td>Four Traditional Tests</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>There must be a personal injury</td>
</tr>
<tr>
<td>2</td>
<td>Resulting from an accident that</td>
</tr>
<tr>
<td>3</td>
<td>Arose out of employment</td>
</tr>
<tr>
<td>4</td>
<td>And in the course of employment</td>
</tr>
</tbody>
</table>
Workers Compensation Basics – Types of Benefits

**Temporary Total Disability**
- Employee completely unable to work
- Injury is of a temporary nature
- Benefit is a % of preinjury wage, subject to minimums and maximums
- Waiting period and retroactive period
- In many states, temporary disability benefits end at maximum medical improvement (MMI). In Florida, temporary disability benefits end at 104 weeks.

**Temporary Partial Disability**
- Employee is able to return to work with limitations
- Benefit is a % of difference between preinjury wage and postinjury restricted wage

**Permanent Partial Disability**
- Permanent consequence of work-related injury that is not totally disabling
- Scheduled benefits – vary by body part
- Nonscheduled benefits – based on seriousness of medical consequences and possibly loss of earning capacity
### Workers Compensation Basics – Types of Benefits

**Permanent Total Disability**
- Employee is completely unable to work for an indefinite period
- Benefit is a % of preinjury wage
- In many states, paid for duration of total disability or for life

**Death Benefit**
- Paid to survivors of a worker who was killed on the job

**Medical**
- Generally unlimited
- Employer provides medical benefits as long as they are medically justified
- Employees do not share in the expense of medical care (no deductibles or co-insurance)*
- Many states have fee schedules
- Choice of treating physician varies by state (insurer, employer, employee)
- Managed healthcare (HMOs, PPOs, utilization review)

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*In Florida, after reaching maximum medical improvement (MMI), the employee is responsible for a $10 copay for each medical visit.*
Compared to national averages, Florida spends a higher proportion of total workers compensation costs on medical benefits and a lower proportion of total workers compensation costs on permanent partial disability benefits.

Source: 2014 NCCI Annual Statistical Bulletin, 5 Year Average of Ultimate Costs
The maximum duration of Temporary Total Disability Benefits varies considerably by state across the Southeast.
The maximum duration of Permanent Total Disability Benefits also varies by state across the Southeast.

*Lifetime for paraplegics, quadriplegics, and physical brain damage
## Workers Compensation Basics

### Permanent Partial – Sample Scheduled Injuries

<table>
<thead>
<tr>
<th></th>
<th>Arm at Shoulder</th>
<th>Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>$48,840</td>
<td>$30,580</td>
</tr>
<tr>
<td>FL</td>
<td>No schedule – sliding scale # of weeks based on degree of impairment</td>
<td></td>
</tr>
<tr>
<td>GA</td>
<td>Based on a rating assigned by the treating physician</td>
<td></td>
</tr>
<tr>
<td>NC</td>
<td>$218,880</td>
<td>$131,328</td>
</tr>
<tr>
<td>SC</td>
<td>$165,475</td>
<td>$105,302</td>
</tr>
<tr>
<td>TN</td>
<td>$167,000</td>
<td>$104,375</td>
</tr>
</tbody>
</table>

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### Claimant Attorney Fees

<table>
<thead>
<tr>
<th>State</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>Fixed by circuit court judge up to 15% award.</td>
</tr>
<tr>
<td>FL</td>
<td>Sliding scale subject to approval of judge of compensation claims or court. 20% of 1st $5,000; 15% of next $5,000; 10% of remaining benefits</td>
</tr>
<tr>
<td>GA</td>
<td>Subject to Board of Workers Compensation approval.</td>
</tr>
<tr>
<td>NC</td>
<td>Subject to approval of Industrial Commission.</td>
</tr>
<tr>
<td>SC</td>
<td>Subject to approval of Workers Compensation Commission Claims Department.</td>
</tr>
<tr>
<td>TN</td>
<td>Maximum 20% of award.</td>
</tr>
</tbody>
</table>
Florida
Reforms, Cost Trends and Challenges
Florida Workers Compensation Costs and Trends

For perspective on Florida workers compensation today, first we need to rewind to 2003
Florida Workers Compensation Costs and Trends – SB 50A

NCCI originally estimated that the impact of SB 50A would be a 14% reduction in Florida WC costs.

- **Caps on Attorney Fees**
- **Limitation on PTD benefits and change in eligibility criteria**
- **Medicare-based fee schedules**
- **Restrictions on IMEs**
- **COLA reduced from 5% to 3%**
- **Additional ADR Processes**

**SB 50A Effective 10/1/2003**
Numerous rate decreases followed the passage of Senate Bill 50A. 2014 Florida industry loss costs are 58% lower than 2003 levels and are much more closely aligned with other southeast states.

Source: NCCI Florida State Advisory Forum 2014

Loss Cost = Loss per $100 of Payroll
Rates decreased substantially in the years following the passage of SB 50A. However, the latest change effective January 1, 2015 is the first decrease in recent years.

Source: NCCI Florida State Advisory Forum 2014
Florida claim frequency declined annually through 2008, particularly in the years following the passage of Senate Bill 50A. Frequency has leveled off since 2008.
Florida lost-time claim frequency decreased in policy year 2012 for the first time since 2008.

Source: NCCI Florida proposed loss cost filing effective 1/1/2015
Florida’s indemnity severity is the lowest in the region. The average duration of temporary total disability continues to decline in Florida.
The data below is stated at today’s statutory benefit levels. NCCI estimates that the annual increase in indemnity severity is consistent with the annual wage growth. The overall trend rate in indemnity losses per payroll dollar is -2%. This is consistent with countrywide trends.

Source: NCCI Florida proposed loss cost filing effective 1/1/2015
Medical benefits represent 69% of total benefit costs in Florida versus 54% for the southeast region.
The data below is stated at today’s statutory benefit levels. NCCI estimates that the annual increase in medical severity has outpaced annual wage growth. The overall trend rate in medical losses per payroll dollar is 0%. This is consistent with countrywide trends.

Source: NCCI Florida proposed loss cost filing effective 1/1/2015
Florida Workers Compensation Legislative and Judicial Response
Part 1 – Emma Murray

• Emma Murray v. Mariner Health / Ace – October 2008

• Supreme Court Opinion
  • Ambiguity in calculation of attorney fees
  • Attorneys entitled to “reasonable” fees (i.e. hourly rates rather than a % of benefits)
  • In addition to higher legal costs, concern that many of the benefits of SB 50A would be reversed
    • NCCI estimated that ruling would increase costs by around 19%

• Legislative Response - HB 903 in May 2009
  • Removes ambiguity in SB 50A language
  • Eliminates impact of Murray v. Mariner
### The Case:
*Westphal v. City of St. Petersburg*

### At Issue:
Constitutionality of Cap on Temporary Disability Benefits

### Overview:
- First decision: 1st DCA found the 104-week cap on TTD benefits unconstitutional and reinstated the previous 260-week cap.
- Second decision: 1st DCA reversed itself on issue of constitutionality; worker deemed to be at MMI at 104 weeks and thus eligible to assert a claim for PTD benefits.
- Case certified to Florida Supreme Court.

### Status:
- Oral arguments were heard June 5, 2014.
<table>
<thead>
<tr>
<th>The Case:</th>
<th>Padgett v. State of Florida or Florida Workers Advocates v. Florida</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Issue:</td>
<td>Constitutionality of Workers Compensation Law as Exclusive Remedy</td>
</tr>
</tbody>
</table>

**Overview:**
- On August 13, 2014, District court judge Cueto ruled the WC law (with “Exclusive Remedy”) to be unconstitutional.
- Ruling states that the exclusive remedy provision is no longer an adequate replacement remedy in place of common tort law because WC benefits have been “decimated”

**Status:**
- Third District Court of Appeal has decided to hear the case rather than pass it directly to the Supreme Court.
- After the Third DCA rules, the Supreme Court will still likely review the case.
<table>
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<th>At Issue:</th>
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<tr>
<td><em>Castellanos v. Next Door Company / Amerisure Ins. Co.</em></td>
<td>Constitutionality of Caps on Attorney Fees</td>
</tr>
</tbody>
</table>

**Overview:**
- Issue is that caps on attorney fees are hindering claimants access to courts
- Original issue centered around an award of $164 of attorney fees for over 100 hours of legal work

**Status:**
- Oral arguments were heard November 5, 2014
Patient Protection and Affordable Care Act (ACA) Potential Workers Compensation Implications
ACA – Changing the Face of Healthcare

- 100% Coverage for Preventive Care
- Coverage for Pre-Existing Conditions
- Clinical Effectiveness Research
- Higher Deductibles and Coinsurance
- Reduced Medicare Reimbursements
- Increased Demand for Medical Care

- Removal of Lifetime Caps
- Employee Wellness Programs
- Electronic Health Records
- Coverage Not Required for Part-Time Workers
ACA Potential Impacts on WC
Cost Shifting vs. Lower Medical Costs

Cost Shifting
Cost containment by health insurers leads medical providers to seek increased revenue from other payers (WC)

Lower Medical Costs
Lower costs achieved by Affordable Care Act could pass on to WC (e.g., fee schedules linked to Medicare)

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ACA Potential Impacts on WC
Claim Shifting vs. Fewer Uninsured

Claim Shifting
Injured workers file WC claim instead of health claim to avoid incurring higher health deductible costs and/or to ensure desired treatment

VS.

Fewer Uninsured
More health insurance/coverage for pre-existing conditions/ removal of lifetime max could mean fewer fraudulent WC claims
Primary Care Shortage

- Longer wait times for treatment could lead to increased lost time and WC costs

VS.

Healthier Population

- Preventive services and wellness programs mean fewer WC injuries, faster recovery, reduced co-morbidities

ACA Potential Impacts on WC
Primary Care Shortage vs. Healthier Population

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Increased Fraud

Health insurers’ emphasis on fraud fighting shifts fraud efforts to WC

Increased Taxes and Fees

Increased pharmacy and DME costs due to new taxes and fees passed on to consumers

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Increased cooperation between providers under ACA could extend to WC and Electronic health records reduce duplications and provide better access to quality/cost data.
Changes in workforce demographics could lead to:

- An increase in workers compensation claims if the part-time workers do not have health insurance.
- An increase in workers compensation costs from new, inexperienced workers.
- A decrease in workers compensation costs from younger, healthier workers.
Questions?