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Florida legislative and judicial update

The state of Florida has been a hotbed of legislative and judicial activity in recent weeks.

Workers' compensation-related bills

On June 7, 2013, Fla. Governor Rick Scott signed into law two bills impacting workers' compensation claims handling.

Senate Bill 662

The enactment of [Senate Bill 662](#) finally ends the battle over reimbursement for repackaged drugs. In 2010, then-Governor Charlie Crist vetoed House Bill 5306, which contained a provision limiting reimbursement for repackaged drugs to an amount not to exceed the amount paid to a pharmacy for the same drug. Similar bills were filed in 2011 and 2012, but both died in state Senate committees.

While Senate Bill 662 will not limit the reimbursement for repackaged drugs to the amount paid to a pharmacy for the same drug as hoped, the National Council of Compensation Insurance (NCCI) estimates that the provisions in SB 662 will result in an impact of -0.7 percent on overall workers' compensation costs and has filed for a rate reduction.

This legislation is effective as of July 1, 2013. Click [here](#) for a summary of this bill's provisions.

House Bill 553

[House Bill 553](#) was filed at the request of Fla. Chief Financial Officer Jeff Atwater on behalf of the Department of Financial Services (DFS) and the Division of Workers' Compensation (DWC) to streamline regulations and clean up statutory conflicts.

This bill is also effective July 1, 2013. Click [here](#) for a summary of House Bill 553.

Court case regarding attorney fees

On June 5, 2013, for the second time this year, the Florida First District Court of Appeal (DCA) found a provision of the state's workers' compensation act unconstitutional as applied to the facts of a particular case. In [Jacobson v. Southeast Personnel Leasing/Packard Claims Administration, So. 3d. 1D12-1103 \(Fla. 1st DCA, June 5, 2013\)](#) the court held that sections 440.105(3)(c) and 440.34 of the Florida statute prohibiting injured employees from hiring their own attorneys to represent them against motions to tax costs as unconstitutional.

The injured employee in this case, Eugene Jacobson, suffered a compensable injury to his neck and lower back on September 4, 2007. In 2010, the Judge of Compensation Claims (JCC) denied both continued compensability of Jacobson's lower back condition and permanent total disability (PTD) benefits. As the employer/carrier prevailed on every issue addressed in the 2010 order denying benefits, a motion to tax costs against Jacobson was filed.

Florida workers' compensation reform, Senate Bill 50, which took effect October 1, 2003, amended Section 440.34(3) of the Florida statute to permit "any party" that prevailed in a workers' compensation matter to tax costs against the non-prevailing party. Prior to the reform, only the prevailing claimant could tax costs against the employer/carrier for his/her attorney's fees and costs.

Jacobson's attorney up until that time withdrew on the grounds that it was "no longer economically viable for" him to continue representing Jacobson. He retained a second attorney, who sought approval of an hourly retainer agreement "for services and advice solely on issues that arise as a result of the Verified Motion to Tax Costs against Claimant." The JCC denied the request to approve this retainer agreement, holding that the statute specifically prohibited such fees. The second attorney then withdrew. Jacobson attended the cost hearing without attorney representation and was ordered to pay the employer/carrier \$17,145.76. The second attorney then reappeared to represent the claimant on appeal.

In its decision, the First DCA concluded that Sections 440.34(3) and 440.105(3)(c) of Florida statute violated Jacobson's First Amendment rights to free speech, free association, and petition for redress under the U.S. Constitution by limiting his right to retain an attorney to represent him.

Of particular note, the court specifically limited its opinion to claimant/attorney retainer agreements for representation in prevailing party cost proceedings, so this case is expected to have limited application related to attorney fees.

If you have questions about Fla. Senate Bill 662, House Bill 553, or the First DCA's decision in *Jacobson v. Southeast Personnel Leasing/Packard Claims Administration*, please contact your Sedgwick client services representative.

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