

HB 1999, Engrossed 1

2004

A bill to be entitled

An act relating to workers' compensation for first responders; amending s. 440.02, F.S.; revising and providing definitions; amending s. 440.09, F.S.; revising provisions relating to compensation for occupational diseases and repetitive exposure to provide an exception for first responders; amending s. 440.091, F.S.; providing that certain conditions relating to smallpox vaccinations are an injury by accident arising out of the employment for purposes of ch. 440, F.S.; amending s. 440.093, F.S.; providing conditions for compensation for first responders for cases involving mental or nervous injuries; providing additional conditions for payment of indemnity benefits under ch. 440, F.S.; providing an exception with regard to determination of mental and nervous injuries; amending s. 440.15, F.S.; providing an additional exception with regard to compensation for permanent total disability; amending s. 440.151, F.S.; providing an exception with regard to compensation for occupational diseases; amending s. 440.34, F.S.; providing factors to be considered by a judge of compensation claims in awarding attorney's fees and costs in cases involving first responders; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 440.02, Florida Statutes, is amended, and subsection (42) is added to said section, to read:

HB 1999, Engrossed 1

2004

30 440.02 Definitions.--When used in this chapter, unless the
 31 context clearly requires otherwise, the following terms shall
 32 have the following meanings:

33 (1) "Accident" means only an unexpected or unusual event
 34 or result that happens suddenly. Disability or death due to the
 35 accidental acceleration or aggravation of a venereal disease or
 36 of a disease due to the habitual use of alcohol or controlled
 37 substances or narcotic drugs, or a disease that manifests itself
 38 in the fear of or dislike for an individual because of the
 39 individual's race, color, religion, sex, national origin, age,
 40 or handicap is not an injury by accident arising out of the
 41 employment. Subject to s. 440.15(5), if a preexisting disease or
 42 anomaly is accelerated or aggravated by an accident arising out
 43 of and in the course of employment, only acceleration of death
 44 or acceleration or aggravation of the preexisting condition
 45 reasonably attributable to the accident is compensable, with
 46 respect to any compensation otherwise payable under this
 47 chapter. Except for cases involving a first responder, an injury
 48 or disease caused by exposure to a toxic substance, including,
 49 but not limited to, fungus or mold, is not an injury by accident
 50 arising out of the employment unless there is clear and
 51 convincing evidence establishing that exposure to the specific
 52 substance involved, at the levels to which the employee was
 53 exposed, can cause the injury or disease sustained by the
 54 employee.

55 (42) "First responder" means a law enforcement officer as
 56 defined in s. 943.10, a firefighter as defined in s. 633.30, and
 57 an emergency medical technician or a paramedic as defined in s.
 58 401.23 employed by state or local government. A volunteer

HB 1999, Engrossed 1

2004

59 firefighter engaged by state or local government is also
 60 considered a first responder for purposes of this chapter.

61 Section 2. Subsection (1) of section 440.09, Florida
 62 Statutes, is amended to read:

63 440.09 Coverage.--

64 (1) The employer must pay compensation or furnish benefits
 65 required by this chapter if the employee suffers an accidental
 66 compensable injury or death arising out of work performed in the
 67 course and the scope of employment. The injury, its occupational
 68 cause, and any resulting manifestations or disability must be
 69 established to a reasonable degree of medical certainty, based
 70 on objective relevant medical findings, and the accidental
 71 compensable injury must be the major contributing cause of any
 72 resulting injuries. For purposes of this section, "major
 73 contributing cause" means the cause which is more than 50
 74 percent responsible for the injury as compared to all other
 75 causes combined for which treatment or benefits are sought.
 76 Except for cases involving a first responder, in cases involving
 77 occupational disease or repetitive exposure, both causation and
 78 sufficient exposure to support causation must be proven by clear
 79 and convincing evidence. Pain or other subjective complaints
 80 alone, in the absence of objective relevant medical findings,
 81 are not compensable. For purposes of this section, "objective
 82 relevant medical findings" are those objective findings that
 83 correlate to the subjective complaints of the injured employee
 84 and are confirmed by physical examination findings or diagnostic
 85 testing. Establishment of the causal relationship between a
 86 compensable accident and injuries for conditions that are not
 87 readily observable must be by medical evidence only, as

88 demonstrated by physical examination findings or diagnostic
 89 testing. Major contributing cause must be demonstrated by
 90 medical evidence only.

91 (a) This chapter does not require any compensation or
 92 benefits for any subsequent injury the employee suffers as a
 93 result of an original injury arising out of and in the course of
 94 employment unless the original injury is the major contributing
 95 cause of the subsequent injury. Major contributing cause must be
 96 demonstrated by medical evidence only.

97 (b) If an injury arising out of and in the course of
 98 employment combines with a preexisting disease or condition to
 99 cause or prolong disability or need for treatment, the employer
 100 must pay compensation or benefits required by this chapter only
 101 to the extent that the injury arising out of and in the course
 102 of employment is and remains more than 50 percent responsible
 103 for the injury as compared to all other causes combined and
 104 thereafter remains the major contributing cause of the
 105 disability or need for treatment. Major contributing cause must
 106 be demonstrated by medical evidence only.

107 (c) Death resulting from an operation by a surgeon
 108 furnished by the employer for the cure of hernia as required in
 109 s. 440.15(6) [F.S. 1981] shall for the purpose of this chapter
 110 be considered to be a death resulting from the accident causing
 111 the hernia.

112 (d) If an accident happens while the employee is employed
 113 elsewhere than in this state, which would entitle the employee
 114 or his or her dependents to compensation if it had happened in
 115 this state, the employee or his or her dependents are entitled
 116 to compensation if the contract of employment was made in this

HB 1999, Engrossed 1

2004

117 state, or the employment was principally localized in this
 118 state. However, if an employee receives compensation or damages
 119 under the laws of any other state, the total compensation for
 120 the injury may not be greater than is provided in this chapter.

121 Section 3. Subsection (4) is added to section 440.091,
 122 Florida Statutes, to read:

123 440.091 Law enforcement officer, firefighter, emergency
 124 medical technician, or paramedic; when acting within the course
 125 of employment.--

126 (4) Any adverse result or complication related to a
 127 smallpox vaccination of a first responder shall be deemed to be
 128 an injury by accident arising out of work performed in the
 129 course and the scope of employment.

130 Section 4. Subsections (1) and (2) of section 440.093,
 131 Florida Statutes, are amended to read:

132 440.093 Mental and nervous injuries.--

133 (1) A mental or nervous injury due to stress, fright, or
 134 excitement only is not an injury by accident arising out of the
 135 employment. Except for cases involving a first responder,
 136 nothing in this section shall be construed to allow for the
 137 payment of benefits under this chapter for mental or nervous
 138 injuries without an accompanying physical injury requiring
 139 medical treatment. A physical injury resulting from mental or
 140 nervous injuries unaccompanied by physical trauma requiring
 141 medical treatment shall not be compensable under this chapter,
 142 unless the physical injury is to a first responder. For cases
 143 involving a first responder, payment of medical benefits under
 144 this chapter for mental or nervous injuries shall be made even
 145 if the first responder's mental or nervous injury is

HB 1999, Engrossed 1

2004

146 unaccompanied by a physical injury. However, for cases involving
 147 a first responder, payment of indemnity benefits under this
 148 chapter for mental and nervous injuries shall not be made unless
 149 a physical injury accompanies the mental or nervous injury.

150 (2) Except for cases involving a first responder, mental
 151 or nervous injuries occurring as a manifestation of an injury
 152 compensable under this chapter shall be demonstrated by clear
 153 and convincing medical evidence by a licensed psychiatrist
 154 meeting criteria established in the most recent edition of the
 155 diagnostic and statistical manual of mental disorders published
 156 by the American Psychiatric Association. The compensable
 157 physical injury must be and remain the major contributing cause
 158 of the mental or nervous condition and the compensable physical
 159 injury as determined by reasonable medical certainty must be at
 160 least 50 percent responsible for the mental or nervous condition
 161 as compared to all other contributing causes combined.
 162 Compensation is not payable for the mental, psychological, or
 163 emotional injury arising out of depression from being out of
 164 work or losing employment opportunities, resulting from a
 165 preexisting mental, psychological, or emotional condition or due
 166 to pain or other subjective complaints that cannot be
 167 substantiated by objective, relevant medical findings.

168 Section 5. Paragraph (f) of subsection (1) of section
 169 440.15, Florida Statutes, is amended to read:

170 440.15 Compensation for disability.--Compensation for
 171 disability shall be paid to the employee, subject to the limits
 172 provided in s. 440.12(2), as follows:

173 (1) PERMANENT TOTAL DISABILITY.--

HB 1999, Engrossed 1

2004

174 (f)1. If permanent total disability results from injuries
175 that occurred subsequent to June 30, 1955, and for which the
176 liability of the employer for compensation has not been
177 discharged under s. 440.20(11), the injured employee shall
178 receive additional weekly compensation benefits equal to 3
179 percent of her or his weekly compensation rate, as established
180 pursuant to the law in effect on the date of her or his injury,
181 multiplied by the number of calendar years since the date of
182 injury. The weekly compensation payable and the additional
183 benefits payable under this paragraph, when combined, may not
184 exceed the maximum weekly compensation rate in effect at the
185 time of payment as determined pursuant to s. 440.12(2). These
186 supplemental payments shall not be paid or payable after the
187 employee attains age 62, regardless of whether the employee has
188 applied for or is eligible to apply for social security benefits
189 under 42 U.S.C. s. 402 or s. 423, unless the employee is not
190 eligible for social security benefits under 42 U.S.C. s. 402 or
191 s. 423 either because the employee's compensable injury has
192 prevented the employee from working sufficient quarters to be
193 eligible for such benefits or, in cases involving a first
194 responder, the employer does not participate in the social
195 security program. These supplemental benefits shall be paid by
196 the department out of the Workers' Compensation Administration
197 Trust Fund when the injury occurred subsequent to June 30, 1955,
198 and before July 1, 1984. These supplemental benefits shall be
199 paid by the employer when the injury occurred on or after July
200 1, 1984. Supplemental benefits are not payable for any period
201 prior to October 1, 1974.

HB 1999, Engrossed 1

2004

202 2.a. The department shall provide by rule for the periodic
 203 reporting to the department of all earnings of any nature and
 204 social security income by the injured employee entitled to or
 205 claiming additional compensation under subparagraph 1. Neither
 206 the department nor the employer or carrier shall make any
 207 payment of those additional benefits provided by subparagraph 1.
 208 for any period during which the employee willfully fails or
 209 refuses to report upon request by the department in the manner
 210 prescribed by such rules.

211 b. The department shall provide by rule for the periodic
 212 reporting to the employer or carrier of all earnings of any
 213 nature and social security income by the injured employee
 214 entitled to or claiming benefits for permanent total disability.
 215 The employer or carrier is not required to make any payment of
 216 benefits for permanent total disability for any period during
 217 which the employee willfully fails or refuses to report upon
 218 request by the employer or carrier in the manner prescribed by
 219 such rules or if any employee who is receiving permanent total
 220 disability benefits refuses to apply for or cooperate with the
 221 employer or carrier in applying for social security benefits.

222 3. When an injured employee receives a full or partial
 223 lump-sum advance of the employee's permanent total disability
 224 compensation benefits, the employee's benefits under this
 225 paragraph shall be computed on the employee's weekly
 226 compensation rate as reduced by the lump-sum advance.

227 Section 6. Paragraph (a) of subsection (1) and subsection
 228 (2) of section 440.151, Florida Statutes, are amended to read:

229 440.151 Occupational diseases.--

HB 1999, Engrossed 1

2004

230 (1)(a) Where the employer and employee are subject to the
231 provisions of the Workers' Compensation Law, the disablement or
232 death of an employee resulting from an occupational disease as
233 hereinafter defined shall be treated as the happening of an
234 injury by accident, notwithstanding any other provisions of this
235 chapter, and the employee or, in case of death, the employee's
236 dependents shall be entitled to compensation as provided by this
237 chapter, except as hereinafter otherwise provided; and the
238 practice and procedure prescribed by this chapter shall apply to
239 all proceedings under this section, except as hereinafter
240 otherwise provided. Provided, however, that in no case shall an
241 employer be liable for compensation under the provisions of this
242 section unless such disease has resulted from the nature of the
243 employment in which the employee was engaged under such
244 employer, was actually contracted while so engaged, and the
245 nature of the employment was the major contributing cause of the
246 disease. Major contributing cause must be shown by medical
247 evidence only, as demonstrated by physical examination findings
248 and diagnostic testing. "Nature of the employment" means that in
249 the occupation in which the employee was so engaged there is
250 attached a particular hazard of such disease that distinguishes
251 it from the usual run of occupations, or the incidence of such
252 disease is substantially higher in the occupation in which the
253 employee was so engaged than in the usual run of occupations. In
254 claims for death under s. 440.16, death must occur within 350
255 weeks after last exposure. Except for cases involving a first
256 responder, both causation and sufficient exposure to a specific
257 harmful substance shown to be present in the workplace to

258 support causation shall be proven by clear and convincing
 259 evidence.

260 (2) Whenever used in this section the term "occupational
 261 disease" shall be construed to mean only a disease which is due
 262 to causes and conditions which are characteristic of and
 263 peculiar to a particular trade, occupation, process, or
 264 employment, and to exclude all ordinary diseases of life to
 265 which the general public is exposed, unless the incidence of the
 266 disease is substantially higher in the particular trade,
 267 occupation, process, or employment than for the general public.
 268 "Occupational disease," except for cases involving a first
 269 responder, means only a disease for which there are
 270 epidemiological studies showing that exposure to the specific
 271 substance involved, at the levels to which the employee was
 272 exposed, may cause the precise disease sustained by the
 273 employee.

274 Section 7. Subsections (1) and (7) of section 440.34,
 275 Florida Statutes, are amended to read:

276 440.34 Attorney's fees; costs.--

277 (1) A fee, gratuity, or other consideration may not be
 278 paid for a claimant in connection with any proceedings arising
 279 under this chapter, unless approved as reasonable by the judge
 280 of compensation claims or court having jurisdiction over such
 281 proceedings. Any attorney's fee approved by a judge of
 282 compensation claims for benefits secured on behalf of a claimant
 283 must equal to 20 percent of the first \$5,000 of the amount of
 284 the benefits secured, 15 percent of the next \$5,000 of the
 285 amount of the benefits secured, 10 percent of the remaining
 286 amount of the benefits secured to be provided during the first

HB 1999, Engrossed 1

2004

287 10 years after the date the claim is filed, and 5 percent of the
 288 benefits secured after 10 years. The judge of compensation
 289 claims shall not approve a compensation order, a joint
 290 stipulation for lump-sum settlement, a stipulation or agreement
 291 between a claimant and his or her attorney, or any other
 292 agreement related to benefits under this chapter that provides
 293 for an attorney's fee in excess of the amount permitted by this
 294 section. The judge of compensation claims is not required to
 295 approve any retainer agreement between the claimant and his or
 296 her attorney. The retainer agreement as to fees and costs may
 297 not be for compensation in excess of the amount allowed under
 298 this section. However, for cases involving a first responder
 299 with an alleged exposure to toxic substances or occupational
 300 disease claim, the judge of compensation claims shall consider
 301 the following factors in each case and may increase or decrease
 302 the attorney's fee if, in her or his judgment, the circumstances
 303 of the particular case warrant such action:

304 (a) The time and labor required, the novelty and
 305 difficulty of the questions involved, and the skill required to
 306 perform the legal service properly.

307 (b) The fee customarily charged in the locality for
 308 similar legal services.

309 (c) The amount involved in the controversy and the
 310 benefits payable to the claimant.

311 (d) The time limitations imposed by the claimant or the
 312 circumstances.

313 (e) The experience, reputation, and ability of the
 314 attorney or attorneys performing services.

315 (f) The contingency or certainty of a fee.

HB 1999, Engrossed 1

2004

316 (7) Except for cases involving a first responder with an
317 alleged exposure to toxic substances or occupational disease
318 claim, if an attorney's fee is owed under paragraph (3)(a), the
319 judge of compensation claims may approve an alternative
320 attorney's fee not to exceed \$1,500 only once per accident,
321 based on a maximum hourly rate of \$150 per hour, if the judge of
322 compensation claims expressly finds that the attorney's fee
323 amount provided for in subsection (1), based on benefits
324 secured, fails to fairly compensate the attorney for disputed
325 medical-only claims as provided in paragraph (3)(a) and the
326 circumstances of the particular case warrant such action.

327 Section 8. This act shall take effect upon becoming a law.