

By Senator Gelber

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1 A bill to be entitled
2 An act relating to workers' compensation; amending s.
3 440.105, F.S.; deleting provisions prohibiting
4 payments for services in connection with a worker's
5 compensation claim which are not approved by a judge
6 of compensation claims; amending s. 440.34, F.S.;
7 deleting provisions prohibiting a judge of
8 compensation claims from approving the payment of
9 attorney's fees in excess of certain amounts;
10 providing that ch. 440, F.S., does not impair the
11 right of a claimant to contract with an attorney;
12 deleting provisions prohibiting a judge of
13 compensation claims from approving a retainer
14 agreement that permits placing an employee's
15 compensation into an escrow account until benefits
16 have been paid; deleting a provisions authorizing a
17 judge of compensation claims to approve a limited
18 amount of alternative attorney's fee; amending s.
19 440.491, F.S.; authorizing additional training and
20 education benefits for employees who have attained
21 maximum medical improvement; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (3) of section 440.105, Florida
27 Statutes, is amended to read:

28 440.105 Prohibited activities; reports; penalties;
29 limitations.-

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30 (3) Any person who ~~Whoever~~ violates any provision of this
31 subsection commits a misdemeanor of the first degree, punishable
32 as provided in s. 775.082 or s. 775.083.

33 (a) It shall be unlawful for any employer to knowingly fail
34 to update applications for coverage as required by s. 440.381(1)
35 and department rules within 7 days after the reporting date for
36 any change in the required information, or to post notice of
37 coverage pursuant to s. 440.40.

38 (b) It shall be unlawful for any employer to knowingly
39 participate in the creation of the employment relationship in
40 which the employee has used any false, fraudulent, or misleading
41 oral or written statement as evidence of identity.

42 ~~(c) It is unlawful for any attorney or other person, in his
43 or her individual capacity or in his or her capacity as a public
44 or private employee, or for any firm, corporation, partnership,
45 or association to receive any fee or other consideration or any
46 gratuity from a person on account of services rendered for a
47 person in connection with any proceedings arising under this
48 chapter, unless such fee, consideration, or gratuity is approved
49 by a judge of compensation claims or by the Deputy Chief Judge
50 of Compensation Claims.~~

51 Section 2. Section 440.34, Florida Statutes, is amended to
52 read:

53 440.34 Attorney's fees; costs.—

54 (1) Except as otherwise provided in this chapter, a fee,
55 gratuity, or other consideration may not be paid for a claimant
56 in connection with any proceedings arising under this chapter,
57 unless approved as reasonable by the judge of compensation
58 claims or court having jurisdiction over such proceedings. Any

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59 attorney's fee approved by a judge of compensation claims for
60 benefits secured on behalf of a claimant must equal to 20
61 percent of the first \$5,000 of the amount of the benefits
62 secured, 15 percent of the next \$5,000 of the amount of the
63 benefits secured, 10 percent of the remaining amount of the
64 benefits secured to be provided during the first 10 years after
65 the date the claim is filed, and 5 percent of the benefits
66 secured after 10 years. ~~The judge of compensation claims shall
67 not approve a compensation order, a joint stipulation for lump-
68 sum settlement, a stipulation or agreement between a claimant
69 and his or her attorney, or any other agreement related to
70 benefits under this chapter that provides for an attorney's fee
71 in excess of the amount permitted by this section. The judge of
72 compensation claims is not required to approve any retainer
73 agreement between the claimant and his or her attorney. The
74 retainer agreement as to fees and costs may not be for
75 compensation in excess of the amount allowed under this section.~~

76 (2) In awarding a claimant's attorney's fee, the judge of
77 compensation claims shall consider only those benefits secured
78 by the attorney. An attorney is not entitled to attorney's fees
79 for representation in any issue that was ripe, due, and owing
80 and that reasonably could have been addressed, but was not
81 addressed, during the pendency of other issues for the same
82 injury. The amount, statutory basis, and type of benefits
83 obtained through legal representation shall be listed on all
84 attorney's fees awarded by the judge of compensation claims. For
85 purposes of this section, the term "benefits secured" does not
86 include future medical benefits to be provided on any date more
87 than 5 years after the date the claim is filed. In the event an

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88 offer to settle an issue pending before a judge of compensation
89 claims, including attorney's fees as provided for in this
90 section, is communicated in writing to the claimant or the
91 claimant's attorney at least 30 days prior to the trial date on
92 such issue, for purposes of calculating the amount of attorney's
93 fees to be taxed against the employer or carrier, the term
94 "benefits secured" shall be deemed to include only that amount
95 awarded to the claimant above the amount specified in the offer
96 to settle. If multiple issues are pending before the judge of
97 compensation claims, said offer of settlement shall address each
98 issue pending and shall state explicitly whether or not the
99 offer on each issue is severable. The written offer shall also
100 unequivocally state whether or not it includes medical witness
101 fees and expenses and all other costs associated with the claim.

102 (3) If any party should prevail in any proceedings before a
103 judge of compensation claims or court, there shall be taxed
104 against the nonprevailing party the reasonable costs of such
105 proceedings, not to include attorney's fees. A claimant shall be
106 responsible for the payment of her or his own attorney's fees,
107 except that a claimant shall be entitled to recover a reasonable
108 attorney's fee from a carrier or employer:

109 (a) Against whom she or he successfully asserts a petition
110 for medical benefits only, if the claimant has not filed or is
111 not entitled to file at such time a claim for disability,
112 permanent impairment, wage-loss, or death benefits, arising out
113 of the same accident;

114 (b) In any case in which the employer or carrier files a
115 response to petition denying benefits with the Office of the
116 Judges of Compensation Claims and the injured person has

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117 employed an attorney in the successful prosecution of the
118 petition;

119 (c) In a proceeding in which a carrier or employer denies
120 that an accident occurred for which compensation benefits are
121 payable, and the claimant prevails on the issue of
122 compensability; or

123 (d) In cases where the claimant successfully prevails in
124 proceedings filed under s. 440.24 or s. 440.28.

125
126 Regardless of the date benefits were initially requested,
127 attorney's fees shall not attach under this subsection until 30
128 days after the date the carrier or employer, if self-insured,
129 receives the petition.

130 (4) In such cases in which the claimant is responsible for
131 the payment of her or his own attorney's fees, such fees are a
132 lien upon compensation payable to the claimant, notwithstanding
133 s. 440.22.

134 (5) If any proceedings are had for review of any claim,
135 award, or compensation order before any court, the court may
136 award the injured employee or dependent an attorney's fee to be
137 paid by the employer or carrier, in its discretion, which shall
138 be paid as the court may direct.

139 (6) This chapter does not impair the right of a claimant to
140 contract with an attorney for representation in connection with
141 a claim filed under this chapter. A judge of compensation claims
142 may not enter an order approving the contents of a retainer
143 agreement that permits the escrowing of any portion of the
144 employee's compensation until benefits have been secured.

145 ~~(7) If an attorney's fee is owed under paragraph (3)(a),~~

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146 ~~the judge of compensation claims may approve an alternative~~
147 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
148 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
149 ~~compensation claims expressly finds that the attorney's fee~~
150 ~~amount provided for in subsection (1), based on benefits~~
151 ~~secured, fails to fairly compensate the attorney for disputed~~
152 ~~medical-only claims as provided in paragraph (3) (a) and the~~
153 ~~circumstances of the particular case warrant such action.~~

154 Section 3. Subsection (6) of section 440.491, Florida
155 Statutes, is amended to read:

156 440.491 Reemployment of injured workers; rehabilitation.-

157 (6) TRAINING AND EDUCATION.-

158 (a) Upon referral of an injured employee by the carrier, or
159 upon the request of an injured employee, the department shall
160 conduct a training and education screening to determine whether
161 it should refer the employee for a vocational evaluation and, if
162 appropriate, approve training and education or other vocational
163 services for the employee. The department may not approve formal
164 training and education programs unless it determines, after
165 consideration of the reemployment assessment, pertinent
166 reemployment status reviews or reports, and such other relevant
167 factors as it prescribes by rule, that the reemployment plan is
168 likely to result in return to suitable gainful employment. The
169 department is authorized to expend moneys from the Workers'
170 Compensation Administration Trust Fund, established by s.
171 440.50, to secure appropriate training and education at a
172 community college as designated in s. 1000.21(3) or at a career
173 center established under s. 1001.44, or to secure other
174 vocational services when necessary to satisfy the recommendation

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175 of a vocational evaluator. As used in this paragraph,
176 "appropriate training and education" includes securing a general
177 education diploma (GED), if necessary. The department shall
178 establish training and education standards pertaining to
179 employee eligibility, course curricula and duration, and
180 associated costs.

181 (b) When an employee who has attained maximum medical
182 improvement is unable to earn at least 80 percent of the
183 compensation rate and requires training and education to obtain
184 suitable gainful employment, the employer or carrier shall pay
185 the employee additional training and education temporary total
186 compensation benefits while the employee receives such training
187 and education for a period not to exceed 26 weeks, which period
188 may be extended for an additional 26 weeks or less, if such
189 extended period is determined to be necessary and proper by a
190 judge of compensation claims. The benefits provided under this
191 paragraph shall be calculated in the same manner as temporary
192 total disability benefits under s. 440.15(2). The benefits are
193 ~~not be~~ in addition to the 104 weeks as specified in s.
194 440.15(2). However, a carrier or employer is not precluded from
195 voluntarily paying additional temporary total disability
196 compensation beyond that period. If an employee requires
197 temporary residence at or near a facility or an institution
198 providing training and education which is located more than 50
199 miles away from the employee's customary residence, the
200 reasonable cost of board, lodging, or travel must be borne by
201 the department from the Workers' Compensation Administration
202 Trust Fund established by s. 440.50. An employee who refuses to
203 accept training and education that is recommended by the

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204 vocational evaluator and considered necessary by the department
205 will forfeit any additional training and education benefits and
206 any additional payment for lost wages under this chapter. The
207 department shall adopt rules to implement this section, which
208 shall include requirements placed upon the carrier to notify the
209 injured employee of the availability of training and education
210 benefits as specified in this chapter. The department shall also
211 include information regarding the eligibility for training and
212 education benefits in informational materials specified in ss.
213 440.207 and 440.40.

214 Section 4. This act shall take effect July 1, 2009.