

HB 271

2014

1 A bill to be entitled

2 An act relating to workers' compensation; amending s.
3 440.107, F.S.; revising powers of the Department of
4 Financial Services relating to compliance with and
5 enforcement of workers' compensation coverage
6 requirements; revising requirements for the release of
7 stop-work orders; revising penalties; amending ss.
8 440.15 and 440.16, F.S.; revising rate formulas
9 related to the determination of compensation for
10 disability and death; providing an effective date.

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

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14 Section 1. Paragraphs (a), (d), and (e) of subsection (7)
15 of section 440.107, Florida Statutes, are amended to read:

16 440.107 Department powers to enforce employer compliance
17 with coverage requirements.—

18 (7) (a) Whenever the department determines that an employer
19 who is required to secure the payment to his or her employees of
20 the compensation provided for by this chapter has failed to
21 secure the payment of workers' compensation required by this
22 chapter or to produce the required business records under
23 subsection (5) within 10 ~~5~~ business days after receipt of the
24 written request of the department, such failure shall be deemed
25 an immediate serious danger to public health, safety, or welfare
26 sufficient to justify service by the department of a stop-work

27 order on the employer, requiring the cessation of all business
28 operations. If the department makes such a determination, the
29 department shall issue a stop-work order within 72 hours. The
30 order shall take effect when served upon the employer or, for a
31 particular employer worksite, when served at that worksite. In
32 addition to serving a stop-work order at a particular worksite
33 which shall be effective immediately, the department shall
34 immediately proceed with service upon the employer which shall
35 be effective upon all employer worksites in the state for which
36 the employer is not in compliance. A stop-work order may be
37 served with regard to an employer's worksite by posting a copy
38 of the stop-work order in a conspicuous location at the
39 worksite. The order shall remain in effect until the department
40 issues an order releasing the stop-work order upon a finding
41 that the employer has come into compliance with the coverage
42 requirements of this chapter and has paid any penalty assessed
43 under this section. The department may issue an order of
44 conditional release from a stop-work order to an employer upon a
45 finding that the employer has complied with the coverage
46 requirements of this chapter, paid a penalty of \$1,000 as a down
47 payment, and ~~has~~ agreed to remit periodic payments of the
48 remaining penalty amount pursuant to a payment agreement
49 schedule with the department or pay the remaining penalty amount
50 in full. If an order of conditional release is issued, failure
51 by the employer to pay the penalty in full or enter into a
52 payment agreement with the department within 28 days after

53 service of the stop-work order upon the employer, or to meet any
54 term or condition of such penalty payment agreement, shall
55 result in the immediate reinstatement of the stop-work order and
56 the entire unpaid balance of the penalty shall become
57 immediately due. ~~The department may require an employer who is~~
58 ~~found to have failed to comply with the coverage requirements of~~
59 ~~s. 440.38 to file with the department, as a condition of release~~
60 ~~from a stop-work order, periodic reports for a probationary~~
61 ~~period that shall not exceed 2 years that demonstrate the~~
62 ~~employer's continued compliance with this chapter. The~~
63 ~~department shall by rule specify the reports required and the~~
64 ~~time for filing under this subsection.~~

65 (d)1. In addition to any penalty, stop-work order, or
66 injunction, the department shall assess against any employer who
67 has failed to secure the payment of compensation as required by
68 this chapter a penalty equal to 2 ~~1.5~~ times the amount the
69 employer would have paid in premium when applying approved
70 manual rates to the employer's payroll during periods for which
71 it failed to secure the payment of workers' compensation
72 required by this chapter within the preceding 2-year ~~3-year~~
73 period or \$1,000, whichever is greater. For employers who have
74 not been previously issued a stop-work order, the department
75 must allow the employer to receive a credit for the initial
76 payment of the estimated annual workers' compensation policy
77 premium, as determined by the carrier, to be applied to the
78 penalty. Before applying the credit to the penalty, the employer

79 must provide the department with documentation reflecting that
80 the employer has secured the payment of compensation pursuant to
81 s. 440.38 and proof of payment to the carrier. In order for the
82 department to apply a credit for an employer that has secured
83 the payment of compensation by entering into an employee leasing
84 contract with a licensed employee leasing company, the employer
85 must provide the department with a written attestation by a
86 representative from the employee leasing company that the
87 employer has entered into an employee leasing contract, the
88 dollar amount attributable to the initial payment of the
89 estimated workers' compensation premium for the employer, and
90 proof of payment to the employee leasing company. The \$1,000
91 penalty shall be assessed against the employer even if the
92 calculated penalty after the credit has been applied is less
93 than \$1,000.

94 2. Any subsequent violation within 5 years after the most
95 recent violation shall, in addition to the penalties set forth
96 in this subsection, be deemed a knowing act within the meaning
97 of s. 440.105.

98 (e) When an employer fails to provide business records
99 sufficient to enable the department to determine the employer's
100 payroll for the period requested for the calculation of the
101 penalty provided in paragraph (d), for penalty calculation
102 purposes, the imputed weekly payroll for each employee,
103 corporate officer, sole proprietor, or partner shall be the
104 statewide average weekly wage as defined in s. 440.12(2)

105 multiplied by 2 ~~4.5~~.

106 Section 2. Paragraph (a) of subsection (1), paragraph (a)
107 of subsection (2), and paragraph (a) of subsection (4) of
108 section 440.15, Florida Statutes, is amended to read:

109 440.15 Compensation for disability.—Compensation for
110 disability shall be paid to the employee, subject to the limits
111 provided in s. 440.12(2), as follows:

112 (1) PERMANENT TOTAL DISABILITY.—

113 (a) In case of total disability adjudged to be permanent,
114 66 2/3 or 66.67 percent of the average weekly wages shall be
115 paid to the employee during the continuance of such total
116 disability. No compensation shall be payable under this section
117 if the employee is engaged in, or is physically capable of
118 engaging in, at least sedentary employment.

119 (2) TEMPORARY TOTAL DISABILITY.—

120 (a) Subject to subsection (7), in case of disability total
121 in character but temporary in quality, 66 2/3 or 66.67 percent
122 of the average weekly wages shall be paid to the employee during
123 the continuance thereof, not to exceed 104 weeks except as
124 provided in this subsection, s. 440.12(1), and s. 440.14(3).
125 Once the employee reaches the maximum number of weeks allowed,
126 or the employee reaches the date of maximum medical improvement,
127 whichever occurs earlier, temporary disability benefits shall
128 cease and the injured worker's permanent impairment shall be
129 determined.

130 (4) TEMPORARY PARTIAL DISABILITY.—

131 (a) Subject to subsection (7), in case of temporary
132 partial disability, compensation shall be equal to 80 percent of
133 the difference between 80 percent of the employee's average
134 weekly wage and the salary, wages, and other remuneration the
135 employee is able to earn postinjury, as compared weekly;
136 however, weekly temporary partial disability benefits may not
137 exceed an amount equal to $66 \frac{2}{3}$ or 66.67 percent of the
138 employee's average weekly wage at the time of accident. In order
139 to simplify the comparison of the preinjury average weekly wage
140 with the salary, wages, and other remuneration the employee is
141 able to earn postinjury, the department may by rule provide for
142 payment of the initial installment of temporary partial
143 disability benefits to be paid as a partial week so that payment
144 for remaining weeks of temporary partial disability can coincide
145 as closely as possible with the postinjury employer's work week.
146 The amount determined to be the salary, wages, and other
147 remuneration the employee is able to earn shall in no case be
148 less than the sum actually being earned by the employee,
149 including earnings from sheltered employment. Benefits shall be
150 payable under this subsection only if overall maximum medical
151 improvement has not been reached and the medical conditions
152 resulting from the accident create restrictions on the injured
153 employee's ability to return to work.

154 Section 3. Paragraph (b) of subsection (1) and subsection
155 (3) of section 440.16, Florida Statutes, are amended to read:

156 440.16 Compensation for death.—

157 (1) If death results from the accident within 1 year
158 thereafter or follows continuous disability and results from the
159 accident within 5 years thereafter, the employer shall pay:

160 (b) Compensation, in addition to the above, in the
161 following percentages of the average weekly wages to the
162 following persons entitled thereto on account of dependency upon
163 the deceased, and in the following order of preference, subject
164 to the limitation provided in subparagraph 2., but such
165 compensation shall be subject to the limits provided in s.
166 440.12(2), shall not exceed \$150,000, and may be less than, but
167 shall not exceed, for all dependents or persons entitled to
168 compensation, 66 2/3 or 66.67 percent of the average wage:

169 1. To the spouse, if there is no child, 50 percent of the
170 average weekly wage, such compensation to cease upon the
171 spouse's death.

172 2. To the spouse, if there is a child or children, the
173 compensation payable under subparagraph 1. and, in addition, 16
174 2/3 percent on account of the child or children. However, when
175 the deceased is survived by a spouse and also a child or
176 children, whether such child or children are the product of the
177 union existing at the time of death or of a former marriage or
178 marriages, the judge of compensation claims may provide for the
179 payment of compensation in such manner as may appear to the
180 judge of compensation claims just and proper and for the best
181 interests of the respective parties and, in so doing, may
182 provide for the entire compensation to be paid exclusively to

183 the child or children; and, in the case of death of such spouse,
184 33 1/3 percent for each child. However, upon the surviving
185 spouse's remarriage, the spouse shall be entitled to a lump-sum
186 payment equal to 26 weeks of compensation at the rate of 50
187 percent of the average weekly wage as provided in s. 440.12(2),
188 unless the \$150,000 limit provided in this paragraph is
189 exceeded, in which case the surviving spouse shall receive a
190 lump-sum payment equal to the remaining available benefits in
191 lieu of any further indemnity benefits. In no case shall a
192 surviving spouse's acceptance of a lump-sum payment affect
193 payment of death benefits to other dependents.

194 3. To the child or children, if there is no spouse, 33 1/3
195 percent for each child.

196 4. To the parents, 25 percent to each, such compensation
197 to be paid during the continuance of dependency.

198 5. To the brothers, sisters, and grandchildren, 15 percent
199 for each brother, sister, or grandchild.

200 (3) Where, because of the limitation in paragraph (1)(b),
201 a person or class of persons cannot receive the percentage of
202 compensation specified as payable to or on account of such
203 person or class, there shall be available to such person or
204 class that proportion of such percentage as, when added to the
205 total percentage payable to all persons having priority of
206 preference, will not exceed a total of said 66 2/3 or 66.67
207 percent, which proportion shall be paid:

208 (a) To such person; or

HB 271

2014

209 | (b) To such class, share and share alike, unless the judge
210 | of compensation claims determines otherwise in accordance with
211 | the provisions of subsection (4).

212 | Section 4. This act shall take effect July 1, 2014.