

By Senator Galvano

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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.

11
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

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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~~

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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 shall 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 the department applies the credit to the
79 penalty, the employer must provide the department with
80 documentation reflecting that the employer has secured the
81 payment of compensation pursuant to s. 440.38 and proof of
82 payment to the carrier. In order for the department to apply a
83 credit for an employer that has secured the payment of
84 compensation by entering into an employee leasing contract with
85 a licensed employee leasing company, the employer must provide
86 the department with a written attestation by a representative
87 from the employee leasing company that the employer has entered

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88 into an employee leasing contract, the dollar amount
89 attributable to the initial payment of the estimated workers'
90 compensation premium for the employer, and proof of payment to
91 the employee leasing company. The \$1,000 penalty shall be
92 assessed against the employer even if the calculated penalty
93 after the credit has been applied is less 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 ~~1.5~~.

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, are 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 is not shall be payable under this~~

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117 section if the employee is engaged in, or is physically capable
118 of 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 partial
132 disability, compensation shall be equal to 80 percent of the
133 difference between 80 percent of the employee's average weekly
134 wage and the salary, wages, and other remuneration the employee
135 is able to earn postinjury, as compared weekly; however, weekly
136 temporary partial disability benefits may not exceed an amount
137 equal to 66 2/3 or 66.67 percent of the employee's average
138 weekly wage at the time of accident. In order to simplify the
139 comparison of the preinjury average weekly wage with the salary,
140 wages, and other remuneration the employee is able to earn
141 postinjury, the department may by rule provide for payment of
142 the initial installment of temporary partial disability benefits
143 to be paid as a partial week so that payment for remaining weeks
144 of temporary partial disability can coincide as closely as
145 possible with the postinjury employer's work week. The amount

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146 determined to be the salary, wages, and other remuneration the
147 employee is able to earn shall in no case be less than the sum
148 actually being earned by the employee, including earnings from
149 sheltered employment. Benefits are ~~shall be~~ payable under this
150 subsection only if overall maximum medical improvement has not
151 been reached and the medical conditions resulting from the
152 accident create restrictions on the injured employee's ability
153 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 or 16.67 percent on account of the child or children.

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175 However, when the deceased is survived by a spouse and also a
176 child or children, whether such child or children are the
177 product of the union existing at the time of death or of a
178 former marriage or marriages, the judge of compensation claims
179 may provide for the payment of compensation in such manner as
180 may appear to the judge of compensation claims just and proper
181 and for the best interests of the respective parties and, in so
182 doing, may provide for the entire compensation to be paid
183 exclusively to the child or children; and, in the case of death
184 of such spouse, 33 1/3 or 33.33 percent for each child. However,
185 upon the surviving spouse's remarriage, the spouse shall be
186 entitled to a lump-sum payment equal to 26 weeks of compensation
187 at the rate of 50 percent of the average weekly wage as provided
188 in s. 440.12(2), unless the \$150,000 limit provided in this
189 paragraph is exceeded, in which case the surviving spouse shall
190 receive a lump-sum payment equal to the remaining available
191 benefits in lieu of any further indemnity benefits. ~~In no case~~
192 ~~shall~~ A surviving spouse's acceptance of a lump-sum payment does
193 not affect payment of death benefits to other dependents.

194 3. To the child or children, if there is no spouse, 33 1/3
195 or 33.33 percent for each child.

196 4. To the parents, 25 percent to each, such compensation to
197 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) If ~~Where~~, because of the limitation in paragraph
201 (1) (b), a person or class of persons cannot receive the
202 percentage of compensation specified as payable to or on account
203 of such person or class, there shall be available to such person

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204 or class that proportion of such percentage as, when added to
205 the total percentage payable to all persons having priority of
206 preference, will not exceed a total of said $66 \frac{2}{3}$ or 66.67
207 percent, which proportion shall be paid:

208 (a) To such person; or

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.