

By Senator Perry

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1 A bill to be entitled
2 An act relating to workers' compensation; amending s.
3 440.02, F.S.; including the terms "specific" and
4 "specifically" as defined terms along with the term
5 "specificity" and revising the associated definition;
6 amending s. 440.11, F.S.; deleting an exception from
7 applicability of fellow-employee immunities; creating
8 s. 440.1915, F.S.; requiring injured employees and
9 other claimants to sign and attest to a specified
10 statement relating to the payment of attorney fees
11 before engaging an attorney or any other
12 representative for certain purposes; prohibiting such
13 injured employees or claimants from proceeding with a
14 petition for benefits, except pro se, until the
15 signature is obtained; amending s. 440.192, F.S.;
16 revising conditions under which a petition for
17 benefits or a portion thereof must be dismissed by the
18 Office of the Judges of Compensation Claims or the
19 assigned judge of compensation claims; revising the
20 information required in such petitions; providing
21 construction; requiring claimants and their attorneys
22 to make a good faith effort to resolve the dispute
23 before filing a petition; requiring that petitions
24 include evidence demonstrating such good faith effort;
25 authorizing judges of compensation claims to determine
26 if such effort was made; requiring the judge of
27 compensation claims to dismiss the petition, and
28 authorizing the judge to impose sanctions, including
29 attorney fees, if he or she finds such effort was not

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30 made; providing that certain dismissals are without
31 prejudice; specifying timeframes within which a judge
32 of compensation claims must enter an order on certain
33 motions to dismiss; revising conditions under which
34 judges of compensation claims are prohibited from
35 awarding attorney fees; amending s. 440.25, F.S.;
36 requiring that the pretrial outline under a certain
37 expedited dispute resolution process contain a
38 specified personal attestation by the claimant's
39 attorney relating to hours to date; revising the
40 timeframe and conditions under which attorney fees
41 attach to certain proceedings; providing an effective
42 date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Subsection (40) of section 440.02, Florida
47 Statutes, is amended to read:

48 440.02 Definitions.—When used in this chapter, unless the
49 context clearly requires otherwise, the following terms shall
50 have the following meanings:

51 (40) "Specific," "specifically," or "specificity" means,
52 for purposes of determining the adequacy of a petition for
53 benefits under s. 440.192, that information on the petition is
54 for benefits sufficient to put the employer or carrier on notice
55 of the exact statutory classification and outstanding time
56 period for each requested benefit, the specific amount of each
57 requested benefit, the calculation used for computing the
58 specific amount of each requested benefit, and ~~of benefits being~~

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59 ~~requested and includes~~ a detailed explanation of any such
60 benefit ~~benefits~~ received that should be increased, decreased,
61 changed, or otherwise modified. If the petition is for medical
62 benefits, the information must ~~shall~~ include specific details as
63 to why such benefits are being requested, including details
64 demonstrating that such benefits have specifically been denied
65 by the adjuster responsible for determining whether benefits are
66 payable to the claimant; why such benefits are medically
67 necessary;~~;~~ and why current treatment, if any, is not
68 sufficient. Any petition requesting alternate or other medical
69 care, including, but not limited to, petitions requesting
70 psychiatric or psychological treatment, must specifically
71 identify the physician, as defined in s. 440.13(1), who is
72 recommending such treatment. A copy of a report from such
73 physician making the recommendation for alternate or other
74 medical care must ~~shall~~ also be attached to the petition and
75 must include specific allegations and statements of fact
76 rebutting the specific denial by the adjuster handling payment
77 of benefits to the injured employee. A judge of compensation
78 claims may ~~shall~~ not order such treatment if a physician is not
79 recommending such treatment.

80 Section 2. Subsection (1) of section 440.11, Florida
81 Statutes, is amended to read:

82 440.11 Exclusiveness of liability.—

83 (1) The liability of an employer prescribed in s. 440.10 is
84 ~~shall be~~ exclusive and in place of all other liability,
85 including vicarious liability, of such employer to any third-
86 party tortfeasor and to the employee, the employee's legal
87 representative ~~thereof~~, husband or wife, parents, dependents,

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88 next of kin, and anyone otherwise entitled to recover damages
89 from such employer at law or in admiralty on account of such
90 injury or death, except as follows:

91 (a) If an employer fails to secure payment of compensation
92 as required by this chapter, an injured employee, or the
93 employee's legal representative ~~thereof~~ in case death results
94 from the injury, may elect to claim compensation under this
95 chapter or to maintain an action at law or in admiralty for
96 damages on account of such injury or death. In such action the
97 defendant may not plead as a defense that the injury was caused
98 by negligence of a fellow employee, that the employee assumed
99 the risk of the employment, or that the injury was due to the
100 comparative negligence of the employee.

101 (b) When an employer commits an intentional tort that
102 causes the injury or death of the employee. For purposes of this
103 paragraph, an employer's actions are ~~shall be~~ deemed to
104 constitute an intentional tort and not an accident only when the
105 employee proves, by clear and convincing evidence, that:

106 1. The employer deliberately intended to injure the
107 employee; or

108 2. The employer engaged in conduct that the employer knew,
109 based on prior similar accidents or on explicit warnings
110 specifically identifying a known danger, was virtually certain
111 to result in injury or death to the employee, and the employee
112 was not aware of the risk because the danger was not apparent
113 and the employer deliberately concealed or misrepresented the
114 danger so as to prevent the employee from exercising informed
115 judgment about whether to perform the work.

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117 The same immunities from liability enjoyed by an employer ~~shall~~
118 extend ~~as well~~ to each employee of the employer when such
119 employee is acting in furtherance of the employer's business and
120 the injured employee is entitled to receive benefits under this
121 chapter. Such fellow-employee immunities do not apply ~~shall not~~
122 ~~be applicable~~ to an employee who acts, with respect to a fellow
123 employee, with willful and wanton disregard or unprovoked
124 physical aggression or with gross negligence when such acts
125 result in injury or death or such acts proximately cause such
126 injury or death, ~~nor shall such immunities be applicable to~~
127 ~~employees of the same employer when each is operating in the~~
128 ~~furtherance of the employer's business but they are assigned~~
129 ~~primarily to unrelated works within private or public~~
130 ~~employment.~~ The same immunity provisions enjoyed by an employer
131 shall also apply to any sole proprietor, partner, corporate
132 officer or director, supervisor, or other person who in the
133 course and scope of his or her duties acts in a managerial or
134 policymaking capacity and the conduct that ~~which~~ caused the
135 alleged injury arose within the course and scope of said
136 managerial or policymaking duties and was not a violation of a
137 law, whether or not a violation was charged, for which the
138 maximum penalty that ~~which~~ may be imposed does not exceed 60
139 days' imprisonment as provided ~~set forth~~ in s. 775.082. The
140 immunity from liability provided in this subsection extends to
141 county governments with respect to employees of county
142 constitutional officers whose offices are funded by the board of
143 county commissioners.

144 Section 3. Section 440.1915, Florida Statutes, is created
145 to read:

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146 440.1915 Notice regarding payment of attorney fees.—Before
147 engaging an attorney or any other representative for services
148 related to a petition for benefits under s. 440.192 or s.
149 440.25, an injured employee or any other party making a claim
150 for benefits under this chapter through an attorney shall attest
151 with his or her personal signature that he or she has reviewed,
152 understands, and acknowledges the following statement, which
153 must be in at least 14-point bold type: "THE WORKERS'
154 COMPENSATION LAW REQUIRES YOU TO PAY YOUR OWN ATTORNEY FEES.
155 YOUR EMPLOYER AND ITS INSURANCE CARRIER ARE NOT REQUIRED TO PAY
156 YOUR ATTORNEY FEES EXCEPT IN CERTAIN CIRCUMSTANCES. EVEN THEN,
157 YOU MAY BE RESPONSIBLE FOR PAYING ATTORNEY FEES IN ADDITION TO
158 ANY AMOUNT YOUR EMPLOYER OR ITS CARRIER MAY BE REQUIRED TO PAY
159 OR AGREE TO PAY, DEPENDING ON THE DETAILS OF YOUR AGREEMENT WITH
160 YOUR ATTORNEY. CAREFULLY READ AND MAKE SURE YOU UNDERSTAND ANY
161 AGREEMENT OR RETAINER FOR REPRESENTATION BEFORE YOU SIGN IT." If
162 the injured employee or other party does not sign or refuses to
163 sign the document attesting that he or she has reviewed,
164 understands, and acknowledges the statement, the injured
165 employee or other party making a claim under this chapter may
166 not proceed with a petition for benefits under s. 440.192 or s.
167 440.25, except pro se, until such signature is obtained.

168 Section 4. Subsections (2), (4), (5), and (7) of section
169 440.192, Florida Statutes, are amended, and subsection (1) of
170 that section is republished, to read:

171 440.192 Procedure for resolving benefit disputes.—

172 (1) Any employee may, for any benefit that is ripe, due,
173 and owing, file with the Office of the Judges of Compensation
174 Claims a petition for benefits which meets the requirements of

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175 this section and the definition of specificity in s. 440.02. An
176 employee represented by an attorney shall file by electronic
177 means approved by the Deputy Chief Judge. An employee not
178 represented by an attorney may file by certified mail or by
179 electronic means approved by the Deputy Chief Judge. The
180 department shall inform employees of the location of the Office
181 of the Judges of Compensation Claims and the office's website
182 address for purposes of filing a petition for benefits. The
183 employee shall also serve copies of the petition for benefits by
184 certified mail, or by electronic means approved by the Deputy
185 Chief Judge, upon the employer and the employer's carrier. The
186 Deputy Chief Judge shall refer the petitions to the judges of
187 compensation claims.

188 (2) Upon receipt of a petition, the Office of the Judges of
189 Compensation Claims, or, upon motion, the assigned judge of
190 compensation claims, shall review the ~~each~~ petition and shall
191 dismiss the ~~each~~ petition or any portion of the ~~such a~~ petition
192 which that does not comply with the requirements of this
193 section, does not meet the definition of specificity under s.
194 440.02(40), and does not ~~on its face~~ specifically identify or
195 itemize the following:

196 (a) The name, address, and telephone number, ~~and social~~
197 ~~security number~~ of the employee.

198 (b) The name, address, and telephone number of the
199 employer.

200 (c) A detailed description of the injury and cause of the
201 injury, including ~~the location of the occurrence and the date or~~
202 dates of the accident and the county in this state or, if the
203 accident occurred outside of this state, the state where the

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204 accident occurred.

205 (d) A detailed description of the employee's job, work
206 responsibilities, and work the employee was performing when the
207 injury occurred.

208 (e) The specific time period for which compensation and the
209 specific classification of compensation were not timely
210 provided.

211 (f) The specific date of maximum medical improvement,
212 character of disability, and specific statement of all benefits
213 or compensation that the employee is seeking. A claim for
214 permanent benefits must include the specific date of maximum
215 medical improvement and the specific date on which such
216 permanent benefits are claimed to begin.

217 (g) All specific travel costs to which the employee
218 believes she or he is entitled, including dates of travel and
219 purpose of travel, means of transportation, and mileage and
220 including the date the request for mileage was filed with the
221 carrier and a copy of the request filed with the carrier.

222 (h) Specific listing of all medical charges alleged unpaid,
223 including the name and address of the medical provider, the
224 amounts due, and the specific dates of treatment.

225 (i) The type or nature of treatment care or attendance
226 sought and the justification for such treatment. If the employee
227 is under the care of a physician for an injury identified under
228 paragraph (c), a copy of the physician's request, authorization,
229 or recommendation for treatment, care, or attendance must
230 accompany the petition.

231 (j) The specific amount of compensation claimed and the
232 methodology used to calculate the average weekly wage, if the

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233 average weekly wage calculated by the employer or carrier is
234 disputed. There is a rebuttable presumption that the average
235 weekly wage and corresponding compensation calculated by the
236 employer or carrier is accurate.

237 (k) Specific explanation of any other disputed issue that a
238 judge of compensation claims will be called to rule upon.

239 (l) The signed attestation required pursuant to s.
240 440.1915.

241 (m) Certification and evidence of a good faith attempt to
242 resolve the dispute pursuant to subsection (4).

243
244 The dismissal of any petition or portion of such a petition
245 under this subsection ~~section~~ is without prejudice and does not
246 require a hearing.

247 (4) (a) Before filing a petition, the claimant or, if the
248 claimant is represented by counsel, the claimant's attorney
249 shall make a good faith effort to resolve the dispute. The
250 petition must include:

251 1. A certification by the claimant or, if the claimant is
252 represented by counsel, the claimant's attorney, stating that
253 the claimant, or attorney if the claimant is represented by
254 counsel, has made a good faith effort to resolve the dispute and
255 that the claimant or attorney was unable to resolve the dispute
256 with the carrier, or the employer if self-insured; and

257 2. Evidence demonstrating such good faith attempt to
258 resolve the dispute as described in the certification.

259 (b) If the petition is not dismissed under subsection (2),
260 the judge of compensation claims has jurisdiction to determine,
261 in his or her independent discretion, whether a good faith

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262 effort to resolve the dispute was made by the claimant or the
263 claimant's attorney. If the judge of compensation claims
264 determines that the claimant or the claimant's attorney did not
265 make a good faith effort to resolve the dispute before filing
266 the petition for benefits, the judge of compensation claims must
267 dismiss the petition and may impose sanctions to ensure
268 compliance with this subsection, which may include, but are not
269 limited to, assessment of attorney fees payable by the
270 claimant's attorney.

271 (5) (a) All motions to dismiss must state with particularity
272 the basis for the motion. The judge of compensation claims shall
273 enter an order upon such motions without hearing, unless good
274 cause for hearing is shown. Dismissal of any petition or portion
275 of a petition under this subsection is without prejudice.

276 (b) Upon a motion that a petition or a portion of a
277 petition be dismissed for lack of specificity, a judge of
278 compensation claims shall enter an order on the motion, unless
279 stipulated in writing by the parties, within 10 days after the
280 motion is filed or, if good cause for a hearing is shown, within
281 20 days after a hearing on the motion. When any petition or
282 portion of a petition is dismissed for lack of specificity under
283 this subsection, the claimant must be allowed 20 days after the
284 date of the order of dismissal in which to file an amended
285 petition. Any grounds for dismissal for lack of specificity
286 under this section which are not asserted within 30 days after
287 receipt of the petition for benefits are thereby waived.

288 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of
289 compensation claims may not award attorney ~~attorney's~~ fees
290 payable by the employer or carrier for services expended or

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291 costs incurred before: ~~prior to~~

292 (a) The filing of a petition that meets the definition of
293 specificity under s. 440.02(40) and includes all items required
294 under subsection (2); or

295 (b) The claimant or the claimant's attorney, if the
296 claimant is represented by counsel, has made a good faith effort
297 to resolve the dispute ~~does not meet the requirements of this~~
298 ~~section.~~

299 Section 5. Paragraphs (h) and (j) of subsection (4) of
300 section 440.25, Florida Statutes, are amended to read:

301 440.25 Procedures for mediation and hearings.—

302 (4)

303 (h) To further expedite dispute resolution and to enhance
304 the self-executing features of the system, those petitions filed
305 in accordance with s. 440.192 that involve a claim for benefits
306 of \$5,000 or less ~~shall~~, in the absence of compelling evidence
307 to the contrary, are ~~be~~ presumed to be appropriate for expedited
308 resolution under this paragraph; and any other claim filed in
309 accordance with s. 440.192, upon the written agreement of both
310 parties and application by either party, may similarly be
311 resolved under this paragraph. A claim in a petition of \$5,000
312 or less for medical benefits only or a petition for
313 reimbursement for mileage for medical purposes must ~~shall~~, in
314 the absence of compelling evidence to the contrary, be resolved
315 through the expedited dispute resolution process provided in
316 this paragraph. For purposes of expedited resolution pursuant to
317 this paragraph, the Deputy Chief Judge shall make provision by
318 rule or order for expedited and limited discovery and expedited
319 docketing in such cases. At least 15 days before the ~~prior to~~

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320 hearing, the parties shall exchange and file with the judge of
321 compensation claims a pretrial outline of all issues, defenses,
322 and witnesses, including a personal attestation by the
323 claimant's attorney detailing his or her hours to date, on a
324 form adopted by the Deputy Chief Judge, ~~+~~ provided that, ~~in no~~
325 ~~event shall~~ such hearing may not be held without 15 days'
326 written notice to all parties. The personal attestation by the
327 claimant's attorney must specifically allocate the hours by each
328 benefit claimed and account for hours relating to multiple
329 benefits in a manner that apportions such hours by percentage,
330 in whole numbers, to each benefit. A ~~no~~ pretrial hearing may not
331 ~~shall~~ be held and a ~~no~~ mediation may not be scheduled unless
332 requested by a party. The judge of compensation claims shall
333 limit all argument and presentation of evidence at the hearing
334 to a maximum of 30 minutes, and such hearings may ~~shall~~ not
335 exceed 30 minutes in length. Neither party shall be required to
336 be represented by counsel. The employer or carrier may be
337 represented by an adjuster or other qualified representative.
338 The employer or carrier and any witness may appear at such
339 hearing by telephone. The rules of evidence shall be liberally
340 construed in favor of allowing introduction of evidence.

341 (j) A judge of compensation claims may not award interest
342 on unpaid medical bills and the amount of such bills may not be
343 used to calculate the amount of interest awarded. Regardless of
344 the date benefits are ~~were~~ initially requested, attorney
345 attorney's fees do not attach under this subsection until 45
346 business ~~30~~ days after the date on which a ~~the carrier or self-~~
347 ~~insured employer receives the~~ petition is filed with the Office
348 of the Judges of Compensation Claims and unless the following

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349 conditions are met:

350 1. Before the petition is filed, the claimant or the
351 claimant's attorney, if the claimant is represented by counsel,
352 makes a good faith effort to resolve the dispute as provided in
353 s. 440.192(4); and

354 2. The petition meets the definition of specificity under
355 s. 440.02(40) and includes all items required under s.
356 440.192(2).

357 Section 6. This act shall take effect July 1, 2021.