



JOHNS EASTERN COMPANY, INC.

Claim Adjusters & Third Party Administrators

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GRICE IS DOWN, BUT NOT OUT?

Change to FRS affects employer's ability to offset certain benefits.

Effective July 1, 2011, the Florida Legislature converted the Florida Retirement System (FRS) to an employee contributory fund requiring current and future FRS members to contribute 3% of their salaries to the retirement system¹. This change to the FRS has greatly impacted an employer's ability to offset certain benefits.

Recently, the First District Court of Appeals (DCA) decided *Hernando County Sheriff's Office/ N. Am. Risk Servs. v. Sikalos*². This decision effectively bars employers from taking a *Grice*³ offset for an injured employee's receipt of FRS benefits, assuming the employee contributed to the plan.

In *Sikalos*, the injured employee, a deputy sheriff, had an average weekly wage of \$851.27. The workers' compensation rate

for the injured worker was \$567.54 per week. On account of his injury, he was also receiving \$1,470.00 a month in Social Security disability benefits, and \$2,530.81 a month for in-line-of-duty disability benefits.



The sources of income relating to the employee's injury totaled \$6,444.23, or \$1,497.96 per week. The injured worker's weekly amount exceeded his average weekly wage by \$646.69. It is important to note that the injured worker in *Sikalos* received the same types of benefits as his *Grice* counterpart. However, at the time *Grice* was decided, the in-line-of-duty FRS benefit was 100% employer funded. The FRS

system has changed since *Grice*, and because of this change the new FRS is more akin to the facts and holding in *City of Hollywood v. Lombardi*⁴.

The *Lombardi* decision involved a city pension plan which was partially contributed to by the employee. The Florida Supreme Court held "where the pension plan is funded at least in part with employees' contributions, decreasing workers' compensation benefits on account of pension benefits runs afoul of section 440.21 Florida Statutes."

Accordingly, offsetting workers' compensation benefits to account for collateral benefits a claimant receives from an employee contributory pension plan is tantamount to requiring the claimant "contribute to a benefit fund...maintained by the employer for the purpose of providing" workers' compensation benefits, a circumstance prohibited by section 440.21⁵.

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UPCOMING CONFERENCES

► **PRIMA: Public Risk Management Association**

Florida Educational Forum: *Exploring the New World of Risk Management*

10/13/14 - 10/16/14
Lake Buena Vista, FL

► **FERMA: Florida Educational Risk Management Association**

2014 Winter Conference

12/2/14 - 12/5/14
Tampa, FL

► **FASI: Florida Association of Self Insureds**

2015 Winter Meeting

1/29/15 - 1/30/15
Lake Mary, FL



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SEXUAL OFFENDER NOTIFICATIONS HEIGHTENED

► Recently enacted Florida Senate Bill 524 heightens the requirements of non-public colleges and universities in Florida to inform students and employees of information concerning sexual offenders in Florida. The law specifically requires as follows:

Each non-public college, university, and school shall inform students and employees at orientation and on its website of the existence of the Department of Law Enforcement sexual predator and sexual offender registry website and the toll-free telephone number that gives access to sexual predator and sexual offender public information.

In addition to the requirements for non public colleges and universities, public institutions also have responsibilities.

The new law mandates:

EDUCATION LAW UPDATE



Each Florida College System institution as defined in s. 1000.21, state university as defined in s. 1000.21, and career center as provided in s. 1001.44 shall inform students and employees at orientation and on its website of the existence of the Department of Law Enforcement sexual predator and sexual offender registry website and

the toll-free telephone number that gives access to sexual predator and sexual offender public information pursuant to F.S. 943.043.

► Over the past several years, numerous laws have been passed to address bullying and other school safety issues. In May, a study was released indicating that bullied students are 31 times more likely to bring a weapon to school than non-bullied peers. Overall, the study estimates that 200,000 bullied high school students have brought weapons to school. The study was based on data from the 2011 Youth Risk Behavior Surveillance System, which included a survey of 15,000 high school students in the United States.

Sniffen & Spellman, P.A.

JOHNS EASTERN: JOINING EFFORTS TO CARE FOR OTHERS



Johns Eastern has just finished our 2nd Quarter fundraising for F.E.L.T., Feeding Empty Little Tummies. F.E.L.T. is Manatee County's original backpack program to feed our homeless children on weekends...a time when they often can go hungry.

The results were great, with almost three large bins of food donated before the 2013-2014 school year ended.

We also raised \$2,000 in donations for F.E.L.T. to purchase fresh food items, such as fruit and bread, for our children's nutritious weekends. Everyone's effort and participation is greatly appreciated!

We are now in our 3rd Quarter fundraising efforts. Johns Eastern will be partnering with Habitat for Humanity and sponsoring a Veterans Build for a local veteran.

We will be using the donations to purchase supplies for the build and participating in the "breaking ground" foundation of the Veterans Build. Our donations will help a local family afford a new home and bright future.

Stephanie Horne, Account Manager
Johns Eastern Charity Committee



FL WORKERS' COMPENSATION CHANGES TAKE EFFECT

► CS/CS/HB 271: Stop Work Orders

The bill amends provisions related to stop work orders (SWO) and associated penalties relating to Florida's workers' compensation law. The bill codifies a recent court decision regarding the calculation of workers' compensation indemnity benefits to allow the payment of such benefits at either 66.67% or the current 66 2/3% of the employee's average weekly wage (AWW). As of 07/01/14 the calculation of the compensation rate will be computed by multiplying the AWW by .6667.

The bill also revises the assessment methodology for the Workers' Compensation Special Disability Trust Fund. The trust fund reimburses employers (or their carriers) for the excess in workers'

compensation benefits they have provided to an employee with a pre-existing impairment who is



subsequently injured in a compensable accident. The bill requires the assessment to be calculated by the

Department of Financial Services (DFS) based upon the net premiums written by carriers and self-insurers, the amount of premiums calculated by the department for self-insured employers, and the anticipated disbursements and expenses of the trust fund.

This change in the assessment calculation will allow the DFS to draw down the trust fund balance to pay older, approved reimbursement requests without increasing the assessment rate. The bill requires all approved but unpaid reimbursement requests, as of June 30, 2014, to be paid by October 31, 2014. The bill reduces the maximum assessment rate from 4.52% to 2.50%. These provisions will not have a fiscal impact on DFS.

RETROSPECTIVE RATING PLANS UPDATE

► CS/HB 785: Retrospective Rating Plans

This bill provides that oral vitamins, nutrient preparations, dietary supplements, and certain medical food are not reimbursable and it authorizes employers to negotiate the retrospectively rated premium with insurers under certain conditions.

The bill also provides requirements for the filing and approval of such plans and associated forms and provides requirements for insurers engaging in the negotiation of premiums with eligible employers.



FLORIDA LEGISLATIVE UPDATE

► CS/CS/SB 1030: Medical Marijuana

Lawmakers approved a bill that authorizes a Florida licensed physician (MD or DO), who has received education in cannabis-based medicine through the Florida Medical Association or the Florida Osteopathic Medical Association, to legally prescribe use of a non-euphoric (low-THC) strain of marijuana for those with a medical need. It also creates a system by which the state would authorize the establishment of five dispensing organizations to supply the state with low-THC cannabis.

► HB 851: In-State Tuition

This bill provides that children of undocumented immigrants that have attended Florida public schools for at least three years prior to applying to in-state public universities are entitled to in-state tuition rates at those same universities.

NEW TASK FORCE TO EXAMINE WORKPLACE DRUG USE



The American Association of Occupational Health Nurses (AAOHN) and the American College of Occupational and Environmental Medicine (ACOEM) will be working together on a task force to study the safety and health issues associated with worker use of marijuana and other drugs.

In a March 10 announcement of the partnership, AAOHN and ACOEM noted that 20 states and Washington, D.C., have legalized medical marijuana, and two states allow recreational use of the drug. The task force intends to examine research and develop evidence based education and recommendations to help environmental, health and safety professionals establish workplace drug policies.

“Marijuana is being viewed as a relatively harmless substance, but this may be a misconception by those who may be unaware of workplace safety issues that can arise when workers are under the influence of marijuana or other drugs,” ACOEM President Ron Loeppke said in a press release.

“To compound the issue, there is a dearth of scientific studies to support the nature of current marijuana products and their effect on workers.”

Safety + Health Magazine

MYTHS REGARDING OLDER ADULTS IN THE WORKPLACE

Some of the social, economic, safety and medical myths about older workers are based on a perception that older workers are frail, unreliable and incapable of working effectively and safely. It is time to set aside these stereotypes and negative attitudes.

The following information presents and responds to some of these myths.

► **Older workers are more likely to have work-related injuries.**

Not true. In fact, older workers suffer fewer job-related injuries.

► **Older workers have failing memories.**

Long-term memory continues to increase with age.

► **Older workers are less productive.**

Productivity is individual and varies more within an age group than between age groups. No significant impact on productivity due to aging is likely until workers are well into their 70's.



► **Older adults have impaired mental or intellectual capacity.**

Studies show intellectual abilities stay intact into the 70's and beyond. Short-term memory may start declining well before age 45, but measurable, in-depth knowledge continues to increase as we age.

Government of Alberta, Human Resources and Employment

GOVERNMENT CONTRACTORS SUBJECT TO PUBLIC LAWS

► The Florida Attorney General's Office has released guidance in the form of an advisory legal opinion on compliance with public records laws for government contractors. Florida's public records law requires that documents or records made or received by public agencies in the course of conducting official business be available for inspection by the public. The public records law applies to state government contractors, just as it does to public agencies, if those contractors are "acting on behalf of" the agency in providing services under the government contract.

The Attorney General's opinion notes that if a contractor is acting on behalf of a public agency, it is essentially taking the place of the public agency, and thus has to comply with the same public records requirements as the public agency. The advisory opinion indicates that

LABOR AND EMPLOYMENT ALERT



contractors under the terms of the law are those that not only have a contract to perform certain services with the state government or its agencies, but those that are providing services in a manner in which they are acting on behalf of that agency in providing those services.

► The Eleventh Circuit Court of Appeals ruled that a memorandum prepared by a Florida firefighters union, which named two members

who filed bias claims against it and warned of potentially costly repercussions for other union members, supports a retaliation verdict against the union.

Affirming jury awards against the IAFF Local 4420, the court found sufficient evidence that the union retaliated against the plaintiffs in violation of Title VII of the 1964 Civil Rights Act and the Florida Civil Rights Act. The memo had warned of potentially costly legal expenses and possible additional union fee assessments as a result of the workers' charges. The Court rejected the union's argument that the memo was protected free speech. The Court noted that preventing workplace discrimination is a compelling government interest and the memo did not constitute speech about a matter of public concern.

Sniffen & Spellman, P.A.

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Lombardi, who held the pension plan, not the employer/carrier is entitled to an offset.

Prior to the new legislation requiring state employees to pay 3% into the FRS, all payments from the FRS to injured workers fell outside of section 440.21 and were allowed to be offset. However, once the legislature required all employees to pay 3% into the FRS, it changed the nature of the FRS. Since state employees are now contributing to a benefit fund (FRS) maintained by the employer (the State of Florida), taking an offset from this benefit fund is not allowed under section 440.21.

The decision in *Sikalos* is not yet final and is the subject of a motion

for rehearing. Should the decision become final, an employer will no longer be entitled to offset for in-line of-duty FRS benefits that have been contributed to by the employee and



the right to any offset will belong to the pension plan. A *Grice* offset may still be available in cases where the pension plan is 100% employer funded or in cases where the worker

never paid into the pension plan (e.g., an individual who ceased working before the 2011 change and never contributed to the pension plan).

¹ Fla. Stat. 121.71 (2013), Fla. Stat. 121.071 (2013), Fla. Stat. 121.011 (2013).

² *Hernando County Sheriff's Office/ N. Am. Risk Servs. v. Sikalos*, 2014 Fla. App. LEXIS 9624, 39 Fla. L. Weekly D 1333, 2014 WL 2874297 (Fla. 2014).

³ *Escambia County Sheriff's Dep't v. Grice*, 692 So. 2d 896, 1997 Fla. LEXIS 596, 22 Fla. L. Weekly S 234 (Fla. 1997).

⁴ *City of Hollywood v. Lombardi*, 770 So. 2d 1196, 2000 Fla. LEXIS 2039, 25 Fla. L. Weekly S 895 (Fla. 2000).

⁵ Fla. Stat. 440.21 (2013).

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FLORIDA LOWERS SDTF, WCATF ASSESSMENT RATES

The Florida Department of Financial Services, Division of Workers' Compensation, is reducing the calendar year 2015 assessment rate for the Special Disabilities Trust Fund (SDTF) from 1.23% to 1.17%, in accordance with Section 440.49(9)(b), Florida Statutes. This new rate is effective January 1, 2015.

The rate is based upon the statutory SDTF assessment rate formula, an analysis of the estimated SDTF



balance as of December 31, 2014, and estimated future expenses, revenues and assessable premiums.

In addition, the Division has also set a new assessment rate for the Workers' Compensation Administration Trust Fund (WCATF). Beginning January 1, 2015, the WCATF assessment rate will be 1.50%, which is down from 2014's rate of 1.61%.

**Florida Department of Financial Services,
Division of Workers' Compensation**

IN THE SPOTLIGHT



Thank You to all Johns Eastern staff who took part in our cookout to raise money for Habitat for Humanity and our Veterans Build.

Together we raised \$830 for building supplies!

WELCOME!

• **Brian Donovan**, the new Claims Specialist for The Florida Conference of The United Methodist Church.

• **Steve Henderson**, the new Director of Risk Management Services at the North East Florida Educational Consortium (NEFEC).

• **Elisa Hernandez**, the new Vice President - Human Resources at

Miami Jewish Health Systems.

• **Zsuzsanna McGovern**, the new Claims Specialist for Pasco County.

• **Walter Hubbard**, the new Manager of Benefits, Compensation & HRIS at Miami Jewish Health Systems.

• **Kristine Scarangella**, the new Workers' Compensation & Safety Manager for

Hernando County.

• **Lauren Weber**, the new Risk Manager for Pasco County.

CONGRATULATIONS!

• **Lanita Battles** has been promoted to Claims/Risk Manager for The Florida Conference of The United Methodist Church.

• **Jerry Haines** has been promoted to HR Director for Hernando County.