

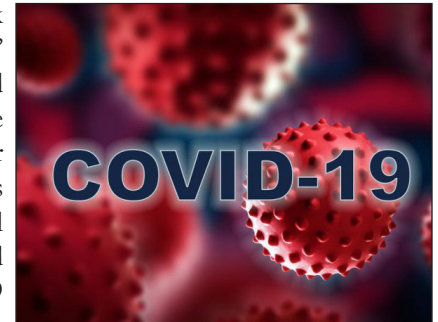


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## Florida Ranks Among the Top Five States for COVID-19 Related Workers' Compensation Claims - Here's What Employers and Carriers Need to Know

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The National Council on Compensation Insurance (NCCI) released a report this past week advising that nationally, Florida was in the top five states for COVID-19 related workers' compensation claims. "There is no question that the COVID-19 pandemic has had and will continue to have a measurable impact on medical treatment of injured workers in the workers' compensation (WC) system. The question is...to what extent. The simple answer is a single metric, and that is time. It may be years before we grasp the full effect of this pandemic on WC." See Colon, D. and Chadarevian, R., "COVID-19s Impact on Medical Treatment in Workers' Compensation—A First Look at 2020" Dec. 2020. NCCI stated that, "Not surprisingly, admission into intensive care units drives the costs of COVID-19 workers' comp medical claims." **Id.**



One effect on Florida workers' compensation claims (in addition to the above-referenced medical exposure,) is the effect of COVID-19 concerning a claimant's work restrictions and economic layoffs due to the coronavirus, which one would reasonably conclude is wholly unrelated to the industrial accidents. However, Florida workers' compensation judges are opining that employers/carriers are responsible for temporary partial disability benefits when jobs are unavailable due to COVID-19.

In *Correa v. The Salvation Army/Chesterfield Services, Inc.*, OJCC No. 20-007055GJJ (Final Compensation Order dated November 20, 2020,) the claimant, as well as other employees, were laid off due to economic reasons as a result of COVID-19. He had been working modified duty until his date of termination. **Id.** Judge Gregory J. Johnsen opined "The fact that the employer could not afford to provide the recuperating claimant with modified work cannot serve as a defense to deny temporary partial disability benefits. To rule otherwise would permit any employer to deny temporary partial disability benefits by simply terminating a claimant, who is on light duty work restrictions, for economic reasons." **Id.** Judge Johnsen stated, "Our First District Court of Appeal in *Toscano* found: "TPD (temporary partial disability) is a classification of benefits designed for those circumstances where the accident-employer cannot, or will not, accommodate the recuperating worker who has been displaced from her pre-injury job and wages as a result of a workplace injury. The fact that an employer cannot afford to provide the recuperating worker modified work does not, under the statutory scheme, provide the basis for a defense." **Id.** citing *Wyeth/Pharma Field Sales v. Toscano*, 40 So.3d 795, 802 (Fla. 1st DCA 2010.) He went on to state, "Our First District Court of Appeal has long held that an injured worker is not precluded from receiving worker's compensation benefits merely because some portion of the wage loss is attributable to a reason unrelated to the industrial injury, such as economic factors or seasonal layoffs." **Id.** citing *Stewart v. CRS Rinker Materials Corp.*, 855 So.2d 1173, 1177 (Fla. 1st DCA 2003 (citing *Betancourt v. Sears Roebuck & Co.*, 693 So.2d 680, 683-684 (Fla. 1st DCA 1997.) Similarly, Judge Johnsen concluded that "the claimant's layoff by the employer, due to the economic impact of COVID-19, cannot constitute a defense where the claimant herein has demonstrated a causal connection between his loss of wages and his industrial accident. The fact that the claimant's layoff was due to the economic impact of COVID-19 does not make it any different from any other kind of economic layoff."

Once a claimant establishes his/her burden and prima facie case regarding entitlement to temporary partial disability benefits, per *Toscano*, the burden then shifts to the employer/carrier to prove that the claimant "unjustifiably refused suitable employment or that some other defense to temporary partial disability benefits would be applicable."

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Furloughs due to COVID-19 have not been an effective defense. When a claimant is placed on work restrictions by the authorized treating physician, it would be in the employer's best interest to continuously offer the claimant light duty employment within the claimant's work restrictions, if at all possible, to avoid exposure for indemnity benefits. Additionally, the employer/carrier should be in regular contact with the authorized treating physicians to release the claimants from their work restrictions when appropriate.

Remember that coronavirus/COVID-19 exposure claims are being treated as occupational injuries and/or exposure. These claims have a higher burden of proof and require the claimant to use a clear and convincing burden of proof to prove causation in relation to Florida Statute Sections 440.01(1) and 440.151(1)(a) and (2).

--Amanda Mitteer Bartley