

November 15, 2016

PRACTICE FOCUS / LABOR & EMPLOYMENT

Florida Workers' Compensation Laws Are Constitutional and Fair to Workers

Commentary by
Justin Parafinczuk

Essentially, *Stahl vs. Hialeah* was an indictment of the entire workers' compensation law in Florida, and the First District Court of Appeal, the Florida Supreme Court and the U.S. Supreme Court have rejected that indictment.



Parafinczuk

The question Stahl raised was whether the workers' comp law provided proper access to the courts for injured workers and a proper remedy for their injuries. It appears from the FL Supreme Court's refusal to accept jurisdiction and the U.S. Supreme Court's refusal as well that the courts are comfortable with the constitutionality of the workers' compensation laws enacted by the legislature.

Why any claimant's attorney would make such a blanket challenge to Florida's workers' compensation law in the first place is somewhat confusing. If the constitutionality challenge in Stahl was actually successful, claimants' attorneys would lose a tremendous amount of business, as these cases would then be litigated in circuit or county court, instead of workers' compensation court, which is a niche and nuanced practice area.

In fact, this effort to eliminate the entire workers' compensation law could have done much more harm to workers than good. Under the current, workers' compensation law, there is no burden

on the claimant to prove fault and no allocation of comparative fault—those are both huge advantages for workers. The only proof necessary to have a workers' compensation claim is that the accident happened while the claimant was working within the scope of his or her employment. Of course, there are other defenses available to the employer/carrier, but nowhere near as many as there are in a general liability case.

From a public policy standpoint, the reality is that the current workers' compensation laws "work" well for workers. Florida's workers' compensations laws can be traced back to the 1930s and have consistently evolved and been updated to provide workers with a fair and streamlined path to seek a legal remedy if they are injured on the job. For example, compare the efficacy of a final hearing in a workers' compensation claim to that of a jury trial in circuit court. At the outset, an injured worker has more access to the courts as there is no filing fee for a petition for benefits, whereas, the filing fee in a civil case can be as high as \$400.

A final hearing in workers' compensation court is conducted by a workers' compensation judge, who is intimately familiar with workers' compensation law and is the ultimate finder of fact. The only live testimony at a final hearing is typically by the claimant, almost all other testimony is by deposition, which includes all of the claimant's treating doctors. Were the same case to proceed in circuit court to a jury, there would be time spent selecting the jury, motion practice, and almost certainly the doc-

tors would be required to testify live at trial and be compensated for their time in court.

For perspective, look at the average time a workers' compensation final hearing takes. A final hearing typically takes 1-4 hours. For a jury trial, it may take 1-4 hours just to select the jury, then the trial could last a week or more.

Probably, the most maligned and most attacked aspect of Florida's workers' compensation laws is the attorney's fees statute. The legislature and the courts have gone back and forth on this issue. The question is whether claimant's attorneys should be limited to a percentage of the benefits they obtain for their client as a fee, (a traditional contingency fee) or should claimant's attorneys be entitled to "reasonable attorney's fees". As of now, the law is that a claimant's attorney who prevails on behalf of his or her client is entitled reasonable attorney's fees.

So, again, the entitlement to reasonable attorney's fees for claimant's lawyers point toward another advantage to not litigating workers' compensation claims in the trial courts. Further, the attorney's fees are one-way, in other words the employer/carrier cannot seek fees from the claimant should it prevail. At least in the trial courts, an employer/carrier could put a claimant at risk for payment of its fees via a proposal for settlement. There is no functional equivalent to a proposal for settlement in workers' compensation court.

Consider this: the recent change to reasonable attorney's fees from the prior

statutory fee structure has resulted in an across the board estimated 15% to 33% increase in workers' compensation premiums in the state of Florida. That sizeable increase in premiums has a ripple effect throughout businesses and is ultimately passed on to consumers. This prefaces the bigger question: what effect would the elimination of workers' compensation laws have on businesses and insurance premiums? The answer is that the increase in insurance premiums would be enormous, largely because it would be extremely difficult for businesses and insurers to calculate their risk exposure to workers' compensation claims that are now being litigated outside the somewhat predictable confines of the current workers' compensation laws.

To that end, it seems clear that the current workers' compensation laws in Florida balance the rights of workers and employers fairly and in compliance with the Florida Constitution and the U.S. Constitution. If anything, the pendulum has swung farther in favor of workers' compensation claimants with the attorney fee change. There will certainly always be a need for amendments and change to the workers' compensation laws as businesses and workers evolve. But, the entire workers' compensation system cannot be eliminated. It may have its flaws, but the alternative is far too untenable for workers and employers.

Justin R. Parafinczuk is a partner with Koch Parafinczuk & Wolf in Coral Gables. He is a board-certified civil trial lawyer and has tried in excess of 50 workers' compensation final hearings.