

|  |  |
|--|--|
| <p><b>REPORT OF INJURY</b></p>             | <p><b>Section 440.185</b><br/>30 days with unless (a) Employer had actual knowledge (b) claimant told the employer within 30 days of learning from a doctor it was work related (c) Employer did not post notices per <b>440.055 (d)</b> Exceptional circumstances.</p>  |
| <p><b>STATUTE OF LIMITATIONS (SOL)</b></p> | <p><b>Section 440.19 (1994)</b><br/>(1) 2 years from date of accident or (2) 1 year from last benefit (date of medical treatment or indemnity paid), whichever is longer. (3) To enforce SOL affirmative defense, and place clear and convincing burden on the claimant.</p>   |
| <p><b>AVERAGE WEEKLY WAGE (AWW)</b></p>    | <p><b>Section 440.14</b><br/>(a) calculated using the 13 calendar weeks before the date of accident excluding the week of (b) similar employees (c) seasonal employees (d) full time wages if other methods cannot be fairly applied (e) claimants under 22 years old (f) part time workers (g) fractional week computation.</p> |

**PERMANENT TOTAL DISABILITY** Section 440.15(1)

(a) 66 2/3 of AWW (b) presumed PTD injuries unless EC establishes claimant can work a sedentary job within 50 mile radius of his home. PTD ends at age 75. Exceptions: (1) PTD continues if the injury prevented the Claimant from working enough quarters to be eligible for Social Security disability and/or retirement benefits. (2) If Claimant is 70 years or older when he or she is injured, PTD will continue for a period of not to exceed 5 years after the determination of PTD.

**TEMPORARY TOTAL DISABILITY** Section 440.15(2)

(a) 66 2/3 of AWW, not to exceed 260 weeks\* (b) 80% for catastrophic injuries first 6 months (c) payable during education under **440.491** and vocational retraining (d) can be suspended by carrier during periods claimant willfully refuses to return DWC19 (Employee Earnings Report) \*Effective June 9, 2016, the statutory cap on temporary total disability benefits went from 104 weeks to 260 weeks. This change applies to any and all claims for D/A from 1/1/94 forward. *Westphal v. City of St. Petersburg (Fla. 2016)*.

**PERMANENT IMPAIRMENT BENEFITS** Section 440.15(3)

(a) Payable within 14 days after Carrier learns of impairment; (b) Rating schedule (currently Florida Uniform Permanent Impairment Rating Guide 1996); (c) Paid biweekly at 75% of TTD, reduced by 50% for each week claimant earns AWW or more. Impairment for psychiatric injuries limited to 1%. 3 weeks paid for each % point, except accidents 10/1/2003 and after; (d) At MMI or at 98 weeks of temporary benefits paid (whichever is first), physician must assign permanent impairment rating; (e) For accidents 10/1/2003 to the present, PIR pmt paid as follows:

- 2 weeks per % point
- 3 weeks per % point
- 4 weeks per % point
- 6 weeks per % point
- 1-10% PIR
- 11-15% PIR
- 16-20% PIR
- 21% and higher PIR

**TEMPORARY PARTIAL DISABILITY** Section 440.15(4)

(a) calculated as 80% of the difference between 80% of AWW and the wages earned = .80 [(.8xAWW) – wages earned] \*cannot exceed TTD rate

- If not working, TPD = .64 x AWW
- If working, must calculate TPD weekly, for example: Claimant with an AWW of \$320.00 returned to work and only earned \$200 his first week back and \$220.00 his second week back. How much TPD is he due?
  - Week 1: .80 [(.8x\$320.00) – \$200.00] = \$44 .80
  - Week 2: .80 [(.8x\$320.00) – \$220.00] = \$28.80
  - Total both weeks = \$73.60

(b) Carrier must send TPD letter to claimant within 5 five days after released to work (c) TPD due 7 days after claimant's first biweekly workweek (d) the claimant has five days to notify carrier if he's unable to work within restrictions. Indemnity can be suspended until notification is made. (e) Claimant remains eligible until the expiration of 260 weeks. *Jones v. Food Lion and Risk Management Services, 202 So. 3d 964 (Fla. 1st DCA 2016)*.

**SUBSEQUENT INJURY:**

**Section 440.15(5)** (a) if employer detrimentally relied on misrepresentation of employee about disability or compensation from a prior accident/injury, no benefits are payable (b) when accident is acceleration, aggravation, or merger with pre-existing condition, carrier can apportion out percent attributable to pre-existing condition, even if not disabling at the time of accident.

**REFUSAL OF EMPLOYMENT:**

**Section 440.15(6)** No indemnity due if claimant refuses suitable employment, unless the judge finds the refusal justifiable.

**LEAVING EMPLOYMENT:**

**Section 440.15(7)** If receiving TPD and the claimant leaves for other employment, affidavit from the claimant regarding wages is required. If the claimant leaves employment without just cause for the 3CC, TPD will be due based on deemed earnings.

**SOCIAL SECURITY CONSIDERATIONS:**

**Section 440.15(9)** Indemnity benefits decreased by amount of Social Security Disability received, until age 62.

## UNEMPLOYMENT COMPENSATION:

**Section 440.15(10)** (a) no TTD is due for any week unemployment compensation received (b) If the claimant is due TPD and receiving unemployment, the carrier pays the difference between unemployment compensation and the TPD rate. TPD rate – UC rate = amount due to claimant.

- For Example: Claimant has a TPD rate of \$400.00 and receives \$275.00/week in unemployment compensation.
- How much TPD is due weekly? \$400.00 - \$275.00 = \$125.00

## FIRST RESPONDERS/LAW ENFORCEMENT OFFICERS:

Changes to **Sec. 112.185**, F.S.: Effective 10/1/2018, physical injury requirement no longer necessary to obtain indemnity benefits for First Responders/ Law Enforcement Officers who are diagnosed by an authorized treating psychiatrist with PTSD as a result of a qualifying event.

## FULL PAY FOR CERTAIN LAW ENFORCEMENT OFFICERS:

Under **Sec. 440.15(11)** Law enforcement officers maliciously or intentionally injured on the job shall be carried at full pay status, with certain prerequisites.

## RECOUPMENT OF OVERPAYMENTS:

**Section 440.15(12)** Up to 20% of claimant's biweekly indemnity can be recouped for overpayments.

## DEATH BENEFITS:

**Section 440.16** (a) Actual funeral expenses not to exceed \$7,500.00 (b) Compensation not to exceed \$150,000.00 and (c) To the surviving spouse, potential payment of postsecondary fees for up to 1,800 classroom hours or up to 80 semester hours.

## MAJOR CONTRIBUTING CAUSE:

The cause which is more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought. There must be medical evidence of objective relevant medical findings that correlate the subjective complaints of the injured employee and are confirmed by physical examination findings or diagnostic testing. **Sec. 440.09(1)**.

## ONE-TIME CHANGE:

Upon the written request of the employee, the Carrier shall give the employee one change of physician during the course of treatment for any one accident. Upon granting a change of physician, the originally

authorized physician in the same specialty as the changed physician shall become de-authorized upon written notification by the employer or carrier, *Retail First Ins. Co. v. Davis*, 207 So.3d 1035 (Fla. 1st DCA 2016). The Carrier must authorize the physician within 5 days after receipt of the request.

**Sec. 440.13(2)(f)**. The 5 days are consecutive days or calendar days. *Hinzman v. Winter Haven Facility Operations, LLC*, 109 So.3d 256 (Fla. 1st DCA 2013). The response must include the name of a specific physician. *Bustamante v. Amber Constr.*, 118 So.3d 921 (Fla. 1st DCA 2013).

## REQUESTS FROM AUTHORIZED HEALTH CARE PROVIDERS:

The Carrier must respond by telephone or in writing, by the close of the third business day after receipt of the request. A Carrier that fails to respond timely consents to the medical necessity for such treatment. **Sec. 440.13(3)(d)**. Notwithstanding the above, a claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, X-ray examinations, or special diagnostic laboratory tests that cost more than \$1,000 and other specialty services within 10 days after receipt of the request. **Sec 440.13(3)(i)**.

## ATTORNEY'S FEES:

Claimant's Attorney will be entitled to attorney's fees and costs if a benefit that is ripe, due, or owing is not timely provided. Under **Sec. 440.34**, there is a two part analysis to determine (1) entitlement and (2) the fee amount.

### Entitlement:

#### D/A: October 1, 1989 through December 31, 1993

- Fee entitlement if not authorized, provided or paid within 21 days of the Petition.

#### D/A: January 1, 1994 through June 30, 2002

- Fee entitlement if benefit was not authorized, provided or paid within 14 days of the Petition.

#### D/A: July 1, 2002 to present

- Fee entitlement if the benefit is not authorized, provided or paid within 30 dates after date Carrier receives the Petition.

### Determination of Fee Amount:

#### D/A: January 1, 1994 through September 30, 2003:

- Guideline fee. Exceptions under Lee Engineering. Court will apply the guideline fee or allow a reasonable hourly fee.

#### D/A: October 1, 2003 through June 30, 2009:

The Florida Supreme Court brought back the Lee Engineering factors to merit "reasonable" hourly fees. *Emma Murray v. Mariner Health*, 994 So.2d 1051 (Fla. 2008).

## Florida Maximum Compensation Rates

| Effective Date | Max.  |
|----------------|-------|
| 01/01/2019     | \$939 |
| 01/01/2018     | \$917 |
| 01/01/2017     | \$886 |
| 01/01/2016     | \$863 |
| 01/01/2015     | \$842 |
| 01/01/2014     | \$827 |
| 01/01/2013     | \$816 |
| 01/01/2012     | \$803 |
| 01/01/2011     | \$782 |
| 01/01/2010     | \$772 |
| 01/01/2009     | \$765 |
| 01/01/2008     | \$746 |
| 01/01/2007     | \$724 |
| 01/01/2006     | \$683 |
| 01/01/2005     | \$651 |
| 01/01/2004     | \$626 |
| 01/01/2003     | \$608 |
| 01/01/2002     | \$594 |
| 01/01/2001     | \$571 |
| 01/01/2000     | \$541 |

### D/A July 1, 2009 and forward:

- 3CC will apply the guideline fee. Exceptions under Lee Engineering if application of the guideline fee results in an unreasonable fee. *Castelanos v. Next Door Company* (Fla. 2016).

### Claimant Paid Attorney's Fees:

Claimant has the right to contract and negotiate the terms of the work performed by the attorney. Claimant can waive statutory rights and agree to pay the attorney with his or her own funds, subject to approval of the 3CC finding that the fee is reasonable as required under **Sec. 440.34**, F.S. *Miles v City of Edgewater Police Department* 190 S.3d 171 (Fla. 1st DCA 2016).