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## Legislative Overview: The Florida Workers' Compensation Act, 1979

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## **Abstract**

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**KEYWORDS:** Florida, workers, compensation

# Legislative Overview: The Florida Workers' Compensation Act, 1979

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## INTRODUCTION

The innovative, unprecedented changes in the Florida Workers' Compensation Act have focused national attention on the state's compensation reform efforts. The reforms are viewed as a creative approach to the resolution of the persistent permanent-partial controversy and as an imaginative response to critics of state-regulated compensation systems. The changes, of course, will have pervasive impact on the practice of workers' compensation law in the state. This article will outline problems the revisions were designed to address. Then, the major changes in the compensation act will be developed. Finally, the anticipated impact of the revisions as well as potential problems will be treated.

## HISTORY

Workers' Compensation insurance is a unique social, political, legal and economic mechanism. A major tenet of the progressive political movement of the early twentieth century, workers' compensation was the first social insurance mechanism in the United States.<sup>1</sup> It was also the first "no-fault" insurance mechanism.<sup>2</sup> The concept of workers' compensation developed as rapid industrialization resulted in

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1. See NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, COMPENDIUM ON WORKERS' COMPENSATION, Chapter 2, a report prepared in accordance with the Occupational Safety and Health Act of 1970. The report was presented to the President and Congress July 31, 1972.

2. *Id.*

vastly increased numbers of industrial accidents. Industrial injury rates in the United States reached their peak in 1907 when in two industries alone, railroading and coal mining, there were 7,000 deaths.<sup>3</sup>

Before the advent of worker's compensation, a worker injured on the job was required to prove that the injury was a result of the employer's negligence.<sup>4</sup> Work-related injuries fell under the tort liability system. Employees were required to prove not only that the injury was entirely the fault of the employer, but that they and their co-workers were totally without fault.<sup>5</sup> By suing an employer, employees risked job loss and long delays for awards of damages. Also, the courts frequently held that certain risks were assumed by an employee in taking a job, and if the injury resulted from those risks, no recovery was permitted.<sup>6</sup> By the middle of the 19th century, protests against the blatant deficiencies and inequities of the common law approach to handling work-related injuries resulted in the development and enactment of various employers' liability laws in many jurisdictions.<sup>7</sup> Although these laws restricted the employers' legal defenses, they continued to require that an employee prove employer negligence in order to receive compensation.<sup>8</sup>

This inequitable situation generated the proposal that is the foundation of all modern workers' compensation systems. Reformers recognized the shortcomings of traditional legal remedies that relied on common law doctrines of blame and fault. The approach they suggested was a tradeoff. Injured workers relinquished their right to tort action against their employers for negligence. In exchange, the injured worker received the security of medical and income replacement benefits covering all injuries incurred in the course of employment. Because the inherent hazards of employment were a cost of production, all of the costs of work-related injuries were borne by the employer. New York

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3. THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 33, prepared as required by the Occupational Safety and Health Act of 1970.

4. *Workers' Compensation: Is There a Better Way?* REPORT TO THE PRESIDENT AND THE CONGRESS OF THE POLICY GROUP OF THE INTERDEPARTMENTAL WORKERS' COMPENSATION TASK FORCE 2 (January 19, 1977).

5. *Id.* at 3.

6. *COMPENDIUM ON WORKERS' COMPENSATION* at 16-17.

7. *Id.*

8. *Id.*

enacted the first compensation act of general application in 1910, and by 1919 thirty-five other states had adopted some form of compensation legislation.<sup>9</sup> The first Florida Compensation Act became law in 1935.<sup>10</sup> Although most jurisdictions enacted such legislation before the Second World War, workers' compensation was not provided in every state until Mississippi enacted its law in 1948.<sup>11</sup>

There are five generally accepted objectives of workers' compensation. The first objective is income replacement. That is, the system seeks to replace wages lost by workers disabled by a job-related injury or sickness. Income replacement should be adequate, equitable, prompt, and certain. The second objective is to provide the injured worker with the medical and vocational rehabilitation necessary to restore earning capacity and foster return to employment. The third objective is occupational accident prevention and reduction. The system should provide significant financial and other incentives for employers to strive to decrease the severity and frequency of accidents. The fourth objective is proper cost allocation. The costs of the program should be divided among employers and industries according to the extent to which they are responsible for losses incurred by employees and for expenses related to the insurance mechanism. Finally, the achievement of the four objectives mentioned above should be met in the most efficient manner possible.<sup>12</sup> While the objectives sometimes conflict with one another, the accomplishment of multiple objectives should be encouraged to the greatest possible extent.

In general, the workers' compensation statutes impose limited liability on employers for injuries incurred by employees in the course of employment. Adequate benefits are to be predetermined and promptly paid. Appropriate medical care is to be provided. The administration of the Act is the responsibility of an administrative body rather than the courts so that, theoretically, administration is expeditious, somewhat informal, and efficient.<sup>13</sup>

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9. *Id.* at 18.

10. ALPERT, *FLORIDA WORKMEN'S COMPENSATION LAW* 37 (2nd ed., 1975).

11. *COMPENDIUM ON WORKERS' COMPENSATION*, at 18.

12. See *THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS*, Chapter 1; also *WHITE PAPER ON WORKERS' COMPENSATION* prepared by U.S. Departments of Labor, Commerce, Health, Education, and Welfare, and Housing and Urban Development, 1974.

13. ALPERT, Chapter 1.

The legal obligation of the employer to have benefits paid to workers in accordance with state law is usually met through an insurance policy purchased from a private insurance company. If, however, the employer has the financial ability, he may "self-insure" by posting appropriate security. Thus, he may bypass the need for an insurance company and assume the risks of the workplace directly. About 22% of workers' compensation insurance premium volume in Florida is self-insurance.<sup>14</sup> Several states provide a mechanism known as a state fund, a system under which insurance coverage may be purchased from the state. Under the Florida Act, there is no state fund. Most employers use the private insurance mechanism to meet their obligations under the law.

## PROBLEMS

Although workers' compensation is a patchwork of state by state legislation, severe problems with both the availability and the affordability of compensation insurance coverage arose across the country in the mid-1970's.<sup>15</sup> The compensation system had been subjected to a series of increasingly complicated pressures. Benefit levels rose significantly to keep pace with inflation-induced wage increases. Political considerations also exerted upward pressure on benefit levels. Diseases such as heart trouble, hypertension, and cumulative trauma, which may bear only a remote relationship to an individual's employment, found their way into the compensation system. Inflation, particularly in the cost of health care, caused tremendous increases in expenditures for benefits. Insurance companies were forced to charge significantly higher premiums for coverage to meet higher costs.

These conditions were exacerbated by the recession of the mid-1970's. Insurance rates skyrocketed across the country as insurance companies attempted to cover eroding profits and vastly increased loss payouts. When profits dropped, companies reacted by implementing se-

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14. See James Nicholas, *Self Insurance for Workmen's Compensation in Florida*, prepared for and included in the FINAL REPORT AND RECOMMENDATIONS OF THE JOINT LEGISLATIVE COMMITTEE ON WORKMEN'S COMPENSATION OF THE FLORIDA LEGISLATURE, March, 1979.

15. See Herbert E. Goodfriend and Robert G. Smith, *Workers' Compensation: A Recurring Trauma or Profit*, a report prepared for Loeb Rhodes, in FOCUS ON INSURANCE, Vol. 2, No. 2, September, 1976.

verely restrictive underwriting standards. This caused considerable expansion of the involuntary insurance market. As a result, consumers experienced severe availability problems.

Florida did not escape the availability crunch. It was accompanied by soaring rates that increased by 169% between January, 1973, and January, 1978.<sup>16</sup> The financial burdens imposed on businessmen became increasingly onerous. Despite these increases, from 1972 through 1976, insurance companies contended that they were continuing to sustain significant underwriting losses. Underwriting losses such as those experienced by companies in recent years meant, in practical terms, even higher rates, inadequate markets for consumers, and insufficient funds to improve benefits.

The climate facing Florida legislation in 1979 was characterized in the words of compensation expert, Cornell University Professor John Burton, as "the worst of all possible worlds".<sup>17</sup> The rapid rate escalation prodded employers, legislators, and regulators to question the validity of overall rate levels as well as the integrity of the underlying data. These conditions led to articulate but erroneous arguments involving insurance company profits and the like.

The 1978 Florida Legislature established a Joint House-Senate Committee to study the Florida Workmen's Compensation Act and to make recommendations for reforms. The 1978 Legislature also added a sunset provision to repeal the Workmen's Compensation Statute (Chapter 440) July 1, 1979, unless the Legislature reenacted a worker's compensation law.<sup>18</sup> The Joint Legislative Committee identified six major problem areas in the system. They were: the high cost of coverage; the rapid increase of job-related injuries; the minimal utilization of rehabilitation; the high cost and volume of permanent-partial disability claims; the inequity in income compensation among workers with permanent-partial disability claims; the inequity in income compensation among workers with permanent-partial disabilities; and the high

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16. Statistics compiled by the Florida Department of Insurance based on rate filings submitted on behalf of Florida workers' compensation carriers by the National Council on Compensation Insurance.

17. Keynote address to the Third Annual National Symposium on Workers' Compensation at the University of Maine, July 9, 1979.

18. 78-300 Fla. Laws §23.

degree of attorney involvement.<sup>19</sup>

A detailed study conducted by the National Council on Compensation Insurance of closed claims in Florida, Alabama, and Wisconsin underscored the problems plaguing the Florida compensation system.<sup>20</sup> The study showed that the system was overused and badly abused. High utilization of attorneys and medical services contributed to the excessive cost of the system. Injured Florida workers, for example, received two to three times the medical benefits of their counterparts in Wisconsin and Alabama. They were confined to hospitals more frequently, had higher hospital bills, and utilized the services of specialized medical practitioners more often. The study showed that claimant's attorneys in Florida were involved more frequently in compensation cases than claimant's attorneys in Alabama or Wisconsin. Florida attorneys were involved sooner and received substantially higher fees.<sup>21</sup> Of course, it is important to note that higher attorney involvement in Florida was also attributable to inefficient claims handling by compensation insurance carriers.

Finally, and perhaps most important, the closed claims study showed that the cost of permanent-partial disabilities was much higher in Florida than in the other two states. Benefits for permanent-partial injuries are paid to workers who, after reaching maximum medical recovery from their injuries, continue to experience either actual loss in wages earned or a loss in their capacity to earn wages. Put another way, there is a permanent-partial disability when a worker is incapacitated but not completely disabled for the rest of his or her life. Permanent-partial disabilities accounted for a significantly greater percentage of cases in Florida (30%) than in Alabama (7.1%) or Wisconsin (9%). The cost of permanent-partial claims as a percentage of total medical and lost time payments was 67% compared to 37% in Alabama and 40% in Wisconsin.<sup>22</sup>

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19. See FINAL REPORT AND RECOMMENDATIONS OF THE JOINT LEGISLATIVE COMMITTEE ON WORKMEN'S COMPENSATION, Mar., 1979.

20. See NATIONAL COUNCIL ON COMPENSATION INSURANCE, WORKMENS' COMPENSATION RESOLVED CLAIMS SURVEY, HOUSE INSURANCE COMMITTEE, a study by the National Council on Compensation Insurance. The study was based on cases resulting in seven days of more of total lost time from work that were resolved in November and December, 1977, in Florida, Alabama, and Wisconsin.

21. All of the above statistics were drawn from the RESOLVED CLAIMS SURVEY.

22. *Id.*



Although the closed claims survey, the Joint Committee, and other involved parties noted highlighted a number of severe problems in the Florida system, it must be noted that the Act worked as it was supposed to for most of the workers injured each year. Injuries requiring only medical treatment and involving brief periods of temporary disability represented more than 95% of work-related accidents.<sup>23</sup> In these cases, the system was virtually self-executing. The injured worker enjoyed the security of prompt, appropriate medical treatment and regular benefit checks. The prolonged insecurity of litigation in order to assess fault and obtain judgments was avoided. About 23% of the system's dollar payout stemmed from this vast majority of routinely handled incidents.<sup>24</sup>

On the other hand, permanent-partial cases that amounted to only about 3% of all claims absorbed almost 70% of the money expended in the system.<sup>25</sup> The permanent-partial injury was the Achilles' heel of the Florida compensation system. Legislators focused much of their attention on this aspect of the system in their reform efforts.

Under the pre-1979 act, the Florida system used a bifurcated approach for compensating the permanent-partial injury. Some of the serious injuries fell within a statutory list that specified fixed amounts of compensation for each injury. Most injuries, however, were not on the statutory schedule. For those injuries compensation was based on either a physician's physical impairment rating or on the diminution of wage-earning capacity, whichever was greater. This numerical rating then was plugged into a formula to determine the amount of compensation payable to the injured worker.<sup>26</sup> Both methods were highly subjective. With physical impairment ratings, disputes often arose between the claimant's physician and the insurance company's physician. This led to "doctor shopping" and contributed to the escalation of fraudulent claims. The diminution of wage-earning capacity rating was just as subjective as the physical impairment rating in that it attempted to take factors such as the worker's age, education and experience into account in order to make a prospective estimate of the effect an injury

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23. See 1976 CASES, CAUSES, COSTS, compilation prepared by the Florida Department of Commerce.

24. *Id.*

25. *Id.*

26. FLA. STAT. §§ 440.15 (3), (4) (1979).

might have on the worker's future wage-earning ability.

This complex mechanism to compensate injured workers ostensibly protected a worker from the adverse financial impact of work-related injury. Practically, it bore little relation to that purpose. The statute provided fixed compensation to workers suffering scheduled injuries, whether the worker was a carpenter or an attorney. If income protection was the objective, this method was obviously arbitrary. The physician's impairment rating also failed to meet the income protection objective as it was a purely medical evaluation and thus unrelated to a worker's economic needs. The diminution of wage-earning capacity standard came closer to the income protection objective but it, like the others, was inherently flawed by its prospective application. That is, when a worker reached maximum medical improvement, an estimate would be made as to the effect of the injury on *future* wage-earning ability. These crystal ball judgments were notoriously imprecise and were aggravated by the fact that more than two-thirds of permanent-partial cases were "washed out" (settled by lump-sum payments).<sup>27</sup> Seriously injured workers often found themselves destitute while workers with minor injuries received large cash awards although they actually suffered little, if any, income loss.

It is important to point out that Florida was not alone in experiencing serious problems with its approach to handling permanent-partial disabilities. The Report of the National Commission of State Workmen's Compensation Laws, completed in July of 1972, pointed out that the "issue arising from benefits for permanent-partial disability are so critical to the future of workmen's compensation that the subject warrants the highest priority. Unfortunately, the critical need for corrective action is matched by the elusiveness of the proper remedy. . . ." <sup>28</sup> In January, 1977, the Policy Group of the federal government's Inter-departmental Workers' Compensation Task Force expressed deep concern about permanent disability cases, observing "excessive litigation, long delays in payments, high subsequent rates of persons without employment, and little relationship between benefits

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27. See FINAL REPORT AND RECOMMENDATIONS OF THE JOINT LEGISLATIVE COMMITTEE ON WORKMEN'S COMPENSATION, Commerce Committee of the Florida Senate.

28. See note 3 *supra*.

awarded and the actual wage loss."<sup>29</sup>

## WAGE-LOSS

The wage-loss concept, adopted by the Florida Legislature as the cornerstone of the 1979 Workers' Compensation Reform Act, focuses on the permanent-partial injury as the key to meaningful progress in restoring the vitality of the compensation system. The primary aim of the wage-loss concept is to abandon the present system, which attempts to predict future earning loss and to replace it with a system that compensates a worker for earning loss when he shows, retrospectively, that he is actually losing money as a result of the injury.

The worker who suffers a permanent injury will receive compensation based upon any actual loss in wages he experiences as a result of the injury. A month-by-month analysis of wages earned after maximum medical improvement will determine the amount of compensation to which the worker is entitled. This formula is known as the 85/95 formula. The worker bears the first 15% of wage-loss. He is then entitled to wage-loss benefits calculated as 95% of the difference between post injury wages and 85% of pre-injury wages, subject to a cap of 66 2/3% of the pre-injury wage.<sup>30</sup> Reformers hope this approach will result in the payment of compensation to workers who actually need it while eliminating compensation paid to workers who are as financially secure after the injury as they were before it. There are three situations in which injured workers are eligible to receive compensation in addition to wage-loss benefits. Wage-loss benefits are paid for a maximum of 350 weeks. To partially protect workers from inflation, pre-injury wages will be discounted for 3% after wage-loss benefits have been paid for two years. For workers injured after July 1, 1980, the discount is 5%.<sup>31</sup>

The Legislature concluded that the lump sum settlements so frequently utilized under the old system did not contribute to the basic purpose of the wage-loss system. A study conducted by Associated Industries of Florida showed that payments in washouts for future medical benefits accounted for more than a fourth of the system-wide pay-

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29. See note 4 *supra* at 19.

30. FLA. STAT. § 440.15 (1979).

31. *Id.*

out for medical expenses.<sup>32</sup> The Joint Committee concluded that utilization of lump-sum settlements for future medical benefits involved a very high degree of subjectivity and imprecision, especially in cases when a settlement was made soon after the injury.<sup>33</sup> Periodic payments are considered preferable to one-time cash awards because they insure worker protection against an actual loss in wages. For these reasons, the new Act severely restricts the ability of the parties involved to "wash out" a case. No lump sum settlements are permitted until six months after maximum medical improvement. Lump sum payments in exchange for the release of the employer's liability for future medical expenses are prohibited.<sup>34</sup>

While the wage-loss plan places the basis of compensation for permanent-partial injuries on more objective criteria, it will not eliminate litigation. A significant new litigable issue will undoubtedly develop from determinations as to whether wage-loss is, in fact, due to injuries or whether it is a result of other unrelated factors.

## ATTORNEY FEES

As pointed out previously, excessive attorney involvement was a significant problem in the Florida system. The closed claims survey underscored the significantly greater frequency of attorney involvement in the Florida system as compared to other states. In some respects, this extensive involvement can be justified by the accurate observation that, under the old system, a worker without an attorney was a sheep among wolves. This necessary assistance of attorneys was, however, expensive. The *Miami Herald* reported in February of 1979 that workers' compensation attorney fees in Florida totaled nearly \$20 million.<sup>35</sup> Until 1978, the employer and his insurance company were responsible for paying all attorney fees of the successful claimant.<sup>36</sup> This provision was

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32. See note 14 *supra* at 20.

33. *Id.*

34. FLA. STAT. §440.19 (12)(a)(1979).

35. See THE PAYOFF FOR PAIN: A LOOK AT FLORIDA'S WORKMEN'S COMPENSATION SYSTEM, a reprint of articles published in the *Miami Herald* between March 18, 1979, and March 25, 1979. The article cited herein appeared March 18, 1979, and was written by Robert D. Shaw, Jr., Director of the *Miami Herald* reporting team that investigated and reported on the Florida workmen's compensation system.

36. See, for example, FLA. STAT. § 440.34 (1979).

amended in 1978 to require that the claimant pay 25% of his legal fees. Now, with certain exceptions, the employee is responsible for payment of his entire attorney fee.<sup>37</sup> Because a compensation claimant is now subject to the normal risks of litigation, the number of unwarranted claims should be reduced.

It should be noted that stringent guidelines have been established for attorney's fees, and approval of such fees by the "deputy commissioner, commission, or court having jurisdiction over such proceedings"<sup>38</sup> is required. Factors are delineated which may be considered if it appears that "the circumstances of [a] particular case warrant"<sup>39</sup> an increase or decrease from the amount allowed under the basic statutory provision.<sup>40</sup>

There are three situations in which the employer or the insurance company still must pay the claimant's attorney fees. If the claim is for medical benefits only, the claimant pays no fees.<sup>41</sup> In situations when the insurance company denies that a compensable injury occurred, and the claimant prevails, the employer/carrier must pay the fees.<sup>42</sup> Also, when it is determined that the employer or insurance company have handled the claim in bad faith, they must pay the claimant's legal expenses.<sup>43</sup> By requiring that claimants pay attorney fees in most cases, the Legislature has brought the Florida system in line with most other states.

## BENEFITS

The 1979 legislation raised benefits. Most disabled workers, previously entitled to only 60% of their average weekly salary, now receive 66 2/3% of their average weekly salary during the period of total disability.<sup>44</sup> The pre-1979 cap on benefits at 66 2/3% of the statewide average weekly wage was increased to 100% of the statewide weekly wages

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37. FLA. STAT. § 440.34 (1979).

38. The statute provides in subsection (4) that one who receives such fees without the proper approval is guilty of a misdemeanor of the second degree.

39. *Id.*

40. FLA. STAT. § 440.34 (1)(a)(b)(1979).

41. FLA. STAT. § 440.34(2)(a)(1979).

42. FLA. STAT. § 440.34(2)(b)(1979).

43. FLA. STAT. § 440.12 (2)(c) (1979).

44. FLA. STAT. § 440.15 (2) (1979).

or \$196 per week.<sup>45</sup> Moreover, this maximum benefit will increase in amounts equal to increases in the statewide weekly wage.<sup>46</sup>

Superficial treatment of benefits focuses only on their amount and adequacy. But the new law also addresses the equity of those benefits. The Joint Legislative Committee found that an unjustifiably large percentage of compensation benefit dollars were going to a small group of workers with relatively minor disabilities. Statistics compiled by the Florida Division of Labor showed that in 1978, for example, only 2.6% of all work injuries and 18% of all disabling injuries resulted in permanent-partial impairments. Yet over 46% of benefits paid out that year went to these workers, many of whom had disabilities of 10% or less.<sup>47</sup> Wage-loss is designed to redistribute benefits so that workers with legitimate need for compensation will receive it. The changes in the benefit structure will result in 80% to 90% of disabled workers receiving higher benefits. Actuaries, nonetheless, estimate that the use of objective criteria generated by wage-loss and more equitable distribution of benefits will result in overall cost saving.

## ADMINISTRATION

The success of the new Workers' Compensation Act depends heavily on aggressive, efficient, and effective administration. The Bureau of Workers' Compensation has been upgraded to division status, and 168 new positions have been authorized reflecting the Legislature's commitment to better administration of the system.<sup>48</sup> The new Act requires the Division to take forceful action to inform parties of their rights and obligations, to endeavor to resolve disputes prior to attorney involvement, to compel carriers to handle claims properly, to regulate self-insurers more aggressively, and to oversee utilization of medical services. Without aggressive administration and regulation in the system will be jeopardized.

Before the 1979 amendments to the Workers' Compensation Law were enacted, appeals of orders from judges of industrial claims were

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45. FLA. STAT. § 440.12 (1)(a) (1979).

46. FLA. STAT. § 440.12 (2)(b) (1979).

47. See FINAL REPORT AND RECOMMENDATIONS OF THE JOINT LEGISLATIVE COMMITTEE ON WORKMEN'S COMPENSATION, Mar, 1979.

48. FLA. STAT. § 440.02 (8)(b) (1979).

made directly to the Industrial Relations Commission, subject to review only by petition for writ of certiorari to the Florida Supreme Court. The new act abolished the Industrial Relations Commission. Appeals from orders of deputy commissioners (formerly known as judges of industrial claims) will be made directly to the First District Court of Appeal in Tallahassee.<sup>49</sup> Appeal to the Supreme Court will be by petition for writ of certiorari. All appeals that were pending before the Industrial Relations Commission as of October 1, 1979, were transferred to the First District Court of Appeal for resolution.<sup>50</sup>

## REHABILITATION

Although most employees injured in work-related accidents return to their jobs after minor medical attention with little if any work time lost, a minority of injured workers suffer injuries that disrupt their lives. For some, injuries are so severe that prolonged medical treatment and convalescence fail to restore them completely to their pre-injury financial, physical or psychological status.<sup>51</sup> Only retraining and education, combined with special treatment, offer a reasonable prospect for return to employment. It is anticipated that the introduction of wage-loss in the Florida system will result in increased attention by employers and insurance carriers to rehabilitation programs.

Under the pre-1979 compensation act, the provision of rehabilitation was the responsibility of the Bureau of Workmen's Compensation of the Department of Labor and Employment Security. The 1979 amendments placed the responsibility on the employer and carrier, at their expense.<sup>52</sup> The wage-loss system gives the employer and insurance carrier a direct economic incentive to rehabilitate an injured worker. Wage-loss benefits payable to the worker will be reduced for every dollar the worker is able to earn after reaching maximum medical improvement. Consequently, the employer and insurance carrier will strive to return the permanently injured worker to the labor force as quickly as possible at the highest possible wage. Additionally, by plac-

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49. FLA. STAT. § 440.25 (4)(f) (1979).

50. *Id.*

51. See Walter Y. Oi, *An Essay on Workmen's Compensation and Industrial Safety*, NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS, Volume 1, at 41-106.

52. FLA. STAT. § 440.49 (1979).

ing the responsibility for rehabilitation with the employer and carrier, immediate contact with and attention to the injured worker will be insured. It is clear that prompt rehabilitation is an essential element in the effective operation of the wage-loss system. The changes in the compensation act relating to rehabilitation are designed to return the injured employee to the labor force as soon as possible. As a result, the injured worker is provided with employment and less wage-loss benefits are paid out exerting subsequent downward pressure on premium levels.

## CONCLUSION

The limited scope of this article precludes discussion of many other changes in the 1979 Workers' Compensation Law. Those changes are less important only in comparison to the significant reforms described above. The reforms enacted by the 1979 Florida Legislature are an ambitious effort to resolve the problems that have plagued the compensation system for many years. The reforms, however, are not a panacea. Even the most optimistic advocates of the reforms recognize that the revisions have engendered some problems.<sup>53</sup>

Initially, education will be the most significant problem area. Because the Compensation Act has been altered in so many ways, there will be a period of confusion as workers, employers, insurance carriers, attorneys, regulators, and other involved parties attempt to familiarize themselves with their new responsibilities and obligations under the law. However, after involved parties acquire experience with the Act, this problem should gradually disappear.

Another anticipated area of concern is the shift of appeals of compensation cases from the Industrial Relations Commission to the First District Court of Appeal. It is feared that the court of appeal will experience a tremendous increase in its new caseload. Indeed, when the new Act took effect October 1, 1979, 1,114 cases pending before the Industrial Relations Commission were transferred to the First District Court of Appeal.<sup>54</sup> With the addition of workers' compensation appeals, the

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53. See preface in ALPERT AND MURPHY, *FLORIDA WORKMEN'S COMPENSATION LAW* (3d ed. 1979) The special 1979 interim supplement provides a pessimistic assessment of 1979 revisions.

54. The Orlando Sentinel Star, October 16, 1979, at 5-C.



court's workload could exceed 4,000 new cases each year. This is an overwhelming burden. When the legislature convenes in 1980, it must respond to this situation.

Finally, as pointed out above, the success of the 1979 reforms depends to a significant extent on the strength and efficiency of the Division of Workers' Compensation. The new law contemplates and encourages nonadversary resolution of conflicts in which the need for litigation is reduced. But, in order for this to happen, the Division of Workers' Compensation must exert forceful leadership in the execution of every aspect of its responsibilities. Further, there must be increased coordination between the Division and the Department of Insurance in terms of essential regulatory responsibilities.

The innovative approaches adopted by the Florida Legislature in response to problems that brought the state's workers' compensation system to the brink of collapse will focus national attention on Florida's experience under the new Act during the next few years. The Florida experience will be particularly important in light of recent proposals for federal intervention in workers' compensation. The Florida experience can prove that reasonable reform is possible under state authority. But, if the Florida system is to complete its move to greater equity, greater efficiency, and more complete coverage and benefits for injured workers, cooperation among employers, workers, insurers, attorneys, and regulators will be essential.