



Will Court Rulings Force Changes to Florida's Workers' Compensation Act?

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On August 13, 2014, a circuit judge for Miami-Dade County, Florida, held that Florida's Workers' Compensation Act (the "Act") is unconstitutional because the Act no longer provides an adequate remedy for injured workers in lieu of tort law. *Florida Workers' Advocates (FWA), Worker' Injury Law & Advocacy Group (WILG), and Elsa Padgett v. State of Florida, Office of the Attorney General*, Case No. 11-13661 CA 25.

After tracing the legislative history of the Act since 1968, Judge Jorge Cueto held that the Florida legislature had cut back benefits over the years to the point where the Act no longer provides a reasonable alternative to the courts and that the Act is an unconstitutional denial of access to the courts as long as it continues to be the exclusive remedy for injured workers.

It is unclear at this time whether this lower court ruling will be appealed. However, the Florida Supreme Court has agreed, as a "matter of great public importance," to hear a similar case with constitutional implications. In *Westphal v. City of St. Petersburg*, 122 So. 3d 440 (Fla. 1st DCA 2013), the question is: what happens when the 104-week statutory limit on temporary total disability benefits expires, but the worker's permanent disability status cannot yet medically be determined? In the past, the worker has been left in a gap without benefits until his or her permanent status was established. The same attorney represents the workers in both of these cases.

The exclusivity of the worker's compensation remedy is the foundation of the system. Although it is highly unlikely that the entire workers' compensation system would be unraveled, insurance carriers and businesses should be aware of these challenges and the associated uncertainty they raise. A resolution eventually may need to come from the Florida legislature.

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