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# Court Cases May Drive Up Workers' Compensation Rates

Florida workers' compensation insurance premiums may rise by **up to 19.6 percent** starting in October 2016, due, in large part, to recent Florida Supreme Court decisions that struck down portions of the state's workers' compensation law.

The National Council on Compensation Insurance (NCCI) proposed the nearly 20 percent rate jump through requests filed with the [Florida Office of Insurance Regulation](#) (FOIR) on May 27, 2016, and June 30, 2016. If approved, the higher rates will apply to all policies in effect as of Oct. 1, 2016, as well as to all new, renewed and additional policies issued on or after that date. Interested parties will have an opportunity to comment on the proposed increases at a [public hearing](#) on Aug. 16, 2016.

## IMPACT OF RECENT DECISIONS

According to the NCCI, the projected financial impact of two Florida Supreme Court decisions—which made significant changes to the Florida Workers' Compensation Act (WCA) in April and June 2016—is the main driver behind the rate-increase requests. The NCCI expects the two court decisions to raise overall costs of the workers' compensation system by a combined total of about 17.2 percent.

*The FOIR will hold a public hearing on the proposed 19.6 percent rate increase at 9 a.m. on **Aug. 16, 2016**. Written testimony must be pre-filed with the FOIR by Aug. 9, 2016.*

### ***Castellanos v. Next Door Company***

The first significant decision was issued on April 28, 2016. In [Castellanos v. Next Door Company](#), the court held that the WCA's mandatory limits on attorneys' fees violated due process protections under both the state and federal constitutions. To remedy the violation, the court reinstated a previous provision of the WCA, which entitles successful claimants to "reasonable" attorneys' fees. The specific amount that may be awarded under that provision depends on several factors outlined in the state's regulations, rather than on a strict statutory formula.

In its rate-increase requests, the NCCI said the result of the *Castellanos* decision could be an elimination of all statutory caps on attorneys' fees and a return to a system under which claimants' attorneys are paid on an hourly basis. The NCCI estimated that the first-year impact of the decision would be a **15 percent** increase in overall workers' compensation costs.

### ***Westphal v. City of St. Petersburg***

The second significant decision was issued on June 9, 2016. In [Westphal v. City of St. Petersburg](#), the court held that the WCA's 104-week limit on temporary total disability (TTD) benefits violated the state constitution by denying claimants' rights to access the courts. The court replaced the 104-week limit with a previous WCA provision that allows injured workers to receive TTD benefits for up to 260 weeks. The NCCI estimated that this decision will increase overall workers' compensation costs by **2.2 percent**.

## IMPACT OF SENATE BILL 1402

While the expected costs associated with the *Castellanos* and *Westphal* decisions account for most of the proposed 19.6 percent rate increase, the NCCI also cited a new state law as an additional justification for its requests.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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Effective July 1, 2016, [Senate Bill 1402](#) ratified updates to a manual that is used to determine how health care providers must be reimbursed for treatment rendered in relation to workers' compensation claims. The NCCI indicated that these updates would result in **1.8 percent** higher costs.

## **NCCI'S REQUESTS**

The NCCI's current proposal follows two consecutive years of falling workers' compensation premiums in Florida. The rates for 2015 reflected a 5.2 percent decrease from previous levels, and the rates in effect as of Jan. 1, 2016, reflect another 4.7 percent reduction.

The NCCI submitted its first request for a 2016 rate increase on May 27, 2016. In that request, the NCCI discussed the projected impacts of the *Castellanos* decision and Senate Bill 1042. The proposal called for a 17.1 percent increase for all policies in effect on or after Aug. 1, 2016. In response, the FOIR planned to hold a public hearing on the proposal in July 2016.

On June 30, 2016, however, the NCCI amended its request to include its concerns related to the *Westphal* decision. After adding in the projected costs of that decision, the NCCI placed the combined impact of all three components at 19.6 percent, or \$714 million. The NCCI's amended proposal also included a later effective date, which would make the rate increases applicable to all workers' compensation insurance policies issued on or after Oct. 1, 2016. If a workers' compensation insurance policy is already in effect as of that date, the proposal calls for the new rates to apply on a pro-rata basis through the remainder of the policy's term.

## **ADDITIONAL CONSIDERATIONS FOR EMPLOYERS**

### ***Retroactive Nature of Castellanos and Westphal***

Because workers' compensation premiums may be changed on a prospective basis only, the NCCI's cost estimates focus solely on work-related accidents that occur on or after the proposed effective date for the rate increases (Oct. 1, 2016). Nevertheless, the decisions in *Castellanos* and *Westphal*, could also increase costs for claims involving earlier injury dates as well. This is because both holdings may be applied to any pending or reopened claims. The NCCI said the retroactive nature of the two decisions may create "a significant unfunded liability," and it is currently in the process of estimating the impact.

### ***Miles v. City of Edgewater Police Department***

On April 20, 2016, a Florida appeals court issued a decision that allows claimants' attorneys to obtain legal fees even if they are not successful in obtaining any other workers' compensation benefits for their clients. The NCCI noted that this decision may give claimants' attorneys "the potential to earn greater compensation than that which would result from the *Castellanos* decision on its own." While it could not estimate any specific financial impact relating to the *Miles* case, the NCCI said the decision could put "additional upward pressure on system costs."

### ***Exclusive Remedy Challenges***

In 2003, the WCA underwent major revisions that have prompted an increase in workers' compensation litigation. Since then, the state's courts have handled two noteworthy cases involving claims that the entire law violates the state and federal constitutions. Specifically, the claimants in those cases asserted that the law does not provide an adequate remedy as a replacement for civil lawsuits by injured workers. The Florida Supreme Court declined to review both cases. This has preserved the WCA as the exclusive remedy for work-related injuries in Florida, but, because the court based its rejections on procedural issues alone, it remains unclear how similar challenges may affect workers' compensation costs in the future.

## **MORE INFORMATION**

Contact The Elan Group or visit the FOIR [website](#) more information on workers' compensation laws and insurance rates in Florida.