

CHAPTER 2012-135

Committee Substitute for House Bill No. 5203

An act relating to reemployment services; repealing s. 1010.87, F.S., relating to the Workers' Compensation Administration Trust Fund within the Department of Education; terminating the trust fund and transferring the balance remaining in, and all revenues of, the terminated fund; requiring the Division of Vocational Rehabilitation within the Department of Education to pay any outstanding debts or obligations of the terminated fund; amending s. 440.015, F.S.; revising legislative intent to remove the Department of Education's duty to administer the Workers' Compensation Law; amending s. 440.125, F.S.; removing the authorization of the Department of Financial Services to share confidential and exempt records, reports, or information with the Department of Education; amending s. 440.44, F.S.; revising legislative intent; deleting certain powers and duties of the Department of Education relating to workers' compensation; amending s. 440.491, F.S., relating to reemployment of injured workers and rehabilitation; removing the definition of the term "department"; authorizing the Department of Financial Services to contract with third parties to administer training and education screenings, reemployment assessments, vocational evaluations, and reemployment services; providing requirements of the third parties; amending s. 440.50, F.S.; deleting a reference to conform; amending s. 440.591, F.S.; removing rulemaking authority of the Department of Education with respect to the Workers' Compensation Law; providing an appropriation and authorizing additional positions for the Department of Financial Services; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective June 30, 2013, section 1010.87, Florida Statutes, is repealed.

Section 2. (1) The Workers' Compensation Administration Trust Fund, FLAIR number 48-2-795, within the Department of Education is terminated.

(2) The balance remaining in, and all revenues of, the trust fund shall be transferred to the Workers' Compensation Administration Trust Fund within the Department of Financial Services.

(3) The Division of Vocational Rehabilitation within the Department of Education shall pay any outstanding debts or obligations of the terminated trust fund as soon as practicable, and the Chief Financial Officer shall close out and remove the terminated trust fund from the various state accounting systems using generally accepted accounting principles concerning warrants outstanding, assets, and liabilities.

Section 3. Section 440.015, Florida Statutes, is amended to read:

440.015 Legislative intent.—It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits. The workers' compensation system in Florida is based on a mutual renunciation of common-law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department, agency, the Office of Insurance Regulation, ~~the Department of Education,~~ and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

Section 4. Section 440.125, Florida Statutes, is amended to read:

440.125 Medical records and reports; identifying information in employee medical bills; confidentiality.—Any medical records and medical reports of an injured employee and any information identifying an injured employee in medical bills which are provided to the department, pursuant to s. 440.13, are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided by this chapter. The department may share any such confidential and exempt records, reports, or information received pursuant to s. 440.13 with the Agency for Health Care Administration ~~and the Department of Education~~ in furtherance of their official duties under ss. 440.13 and 440.134. The agency and the department shall maintain the confidential and exempt status of such records, reports, and information received.

Section 5. Subsections (2), (3), (4), and (5) of section 440.44, Florida Statutes, are amended to read:

440.44 Workers' compensation; staff organization.—

(2) INTENT.—It is the intent of the Legislature that the department, the agency, ~~the Department of Education,~~ and the Division of Administrative Hearings assume an active and forceful role in its administration of this act, so as to ensure that the system operates efficiently and with maximum benefit to both employers and employees.

(3) EXPENDITURES.—The department, the agency, the office, ~~the Department of Education,~~ and the director of the Division of Administrative Hearings shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books; for telephone services and WATS lines; for books of reference, periodicals, equipment, and supplies; and for printing and binding as may be necessary in the administration of this chapter. All expenditures in the administration of this chapter shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the department, the agency, the office, ~~the Department of Education,~~ or the director of the Division of Administrative Hearings.

(4) PERSONNEL ADMINISTRATION.—Subject to the other provisions of this chapter, the department, the agency, the office, ~~the Department of Education,~~ and the Division of Administrative Hearings may appoint, and prescribe the duties and powers of, bureau chiefs, attorneys, accountants, medical advisers, technical assistants, inspectors, claims examiners, and such other employees as may be necessary in the performance of their duties under this chapter.

(5) OFFICE.—The department, the agency, ~~the Department of Education,~~ and the Deputy Chief Judge shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of business under this chapter, at which office the official records and papers shall be kept. The office shall be furnished and equipped. The department, the agency, any judge of compensation claims, or the Deputy Chief Judge may hold sessions and conduct hearings at any place within the state. The Office of the Judges of Compensation Claims shall maintain the 17 district offices, 31 judges of compensation claims, and 31 mediators as they exist on June 30, 2001.

Section 6. Subsection (1) of section 440.491, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

440.491 Reemployment of injured workers; rehabilitation.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Carrier” means group self-insurance funds or individual self-insureds authorized under this chapter and commercial funds or insurance entities authorized to write workers’ compensation insurance under chapter 624.

~~(b) “Department” means the Department of Education.~~

~~(b)(e)~~ “Medical care coordination” includes, but is not limited to, coordinating physical rehabilitation services such as medical, psychiatric, or therapeutic treatment for the injured employee, providing health training to the employee and family, and monitoring the employee’s recovery. The

purposes of medical care coordination are to minimize the disability and recovery period without jeopardizing medical stability, to assure that proper medical treatment and other restorative services are timely provided in a logical sequence, and to contain medical costs.

~~(c)~~(d) “Rehabilitation provider” means a rehabilitation nurse, rehabilitation counselor, or vocational evaluator providing reemployment assessments, medical care coordination, reemployment services, or vocational evaluations under this section, possessing one or more of the following nationally recognized rehabilitation provider credentials:

1. Certified Rehabilitation Registered Nurse, C.R.R.N., certified by the Association of Rehab Professionals.

2. Certified Rehabilitation Counselor, C.R.C., certified by the Commission of Rehabilitation Counselor Certifications.

3. Certified Case Manager, C.C.M., certified by the Commission for Case Management Certification.

4. Certified Disability Management Specialist, C.D.M.S., certified by the Certified Disability Management Specialist Commission.

5. Certified Vocational Evaluator, C.V.E., certified by the Commission of Rehabilitation Counselor Certification.

6. Certified Occupational Health Nurse, C.O.H.N., certified by the American Board of Occupational Health Nurses.

~~(d)~~(e) “Reemployment assessment” means a written assessment performed by a rehabilitation provider which provides a comprehensive review of the medical diagnosis, treatment, and prognosis; includes conferences with the employer, physician, and claimant; and recommends a cost-effective physical and vocational rehabilitation plan to assist the employee in returning to suitable gainful employment.

~~(e)~~(f) “Reemployment services” means services that include, but are not limited to, vocational counseling, job-seeking skills training, ergonomic job analysis, transferable skills analysis, selective job placement, labor market surveys, and arranging other services such as education or training, vocational and on-the-job, which may be needed by the employee to secure suitable gainful employment.

~~(f)~~(g) “Reemployment status review” means a review to determine whether an injured employee is at risk of not returning to work.

~~(g)~~(h) “Suitable gainful employment” means employment or self-employment that is reasonably attainable in light of the employee’s age, education, work history, transferable skills, previous occupation, and injury, and which offers an opportunity to restore the individual as soon as practicable and as nearly as possible to his or her average weekly earnings at the time of injury.

(h)(i) “Vocational evaluation” means a review of the employee’s physical and intellectual capabilities, his or her aptitudes and achievements, and his or her work-related behaviors to identify the most cost-effective means toward the employee’s return to suitable gainful employment.

(8) DEPARTMENT CONTRACTS.—The department may contract with one or more third parties including, but not limited to, rehabilitation providers, to administer training and education screenings, reemployment assessments, vocational evaluations, and reemployment services authorized under this section. Any person or firm selected by the department may not have a conflict of interest that might affect its ability to independently perform its responsibilities with respect to administering the provisions of this subsection. A rehabilitation provider who contracts with the department to provide screenings or evaluations may not provide training or education to the injured employee.

Section 7. Subsection (5) of section 440.50, Florida Statutes, is amended to read:

440.50 Workers’ Compensation Administration Trust Fund.—

(5) Funds appropriated by an operating appropriation or a nonoperating transfer from the Workers’ Compensation Administration Trust Fund to the ~~Department of Education~~, the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Department of Management Services, the First District Court of Appeal, and the Justice Administrative Commission remaining unencumbered as of June 30 or undisbursed as of September 30 each year shall revert to the Workers’ Compensation Administration Trust Fund.

Section 8. Section 440.591, Florida Statutes, is amended to read:

440.591 Administrative procedure; rulemaking authority.—The department, the Financial Services Commission, ~~and the agency, and the Department of Education~~ may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon them.

Section 9. The sum of \$350,000 in recurring funds from the Workers’ Compensation Administration Trust Fund and five full-time equivalent positions and associated salary rate of 260,000 are appropriated to the Department of Financial Services for the 2012-2013 fiscal year to implement the provisions of this act.

Section 10. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012.

Approved by the Governor April 20, 2012.

Filed in Office Secretary of State April 20, 2012.