

## CHAPTER 2016-56

### Committee Substitute for House Bill No. 613

An act relating to workers' compensation system administration; amending s. 440.021, F.S.; conforming a cross-reference; amending s. 440.05, F.S.; deleting a required item to be listed on a notice of election to be exempt; revising specified rules regarding the maintenance of business records by an officer of a corporation; removing the requirement that the Department of Financial Services issue a specified stop-work order; amending s. 440.107, F.S.; requiring that the department allow an employer who has not previously been issued an order of penalty assessment to receive a specified credit to be applied to the penalty; prohibiting the application of a specified credit unless the employer provides specified documentation and proof of payment to the department within a specified period; requiring the department to reduce the final assessed penalty by a specified percentage for employers who have not been previously issued a stop-work order or order of penalty assessment; revising the penalty calculation for the imputed weekly payroll for an employee; amending s. 440.13, F.S.; eliminating the certification requirements when an expert medical advisor is selected by a judge of compensation claims; providing requirements for the selection of an expert medical advisor; amending s. 440.185, F.S.; deleting the requirement that employers notify the department within 24 hours of any injury resulting in death; amending s. 440.42, F.S.; conforming a cross-reference; amending s. 440.49, F.S.; revising definitions; revising the requirements for filing a claim; deleting the preferred worker program; deleting the notification fees on certain filed claims which supplement the Special Disability Trust Fund; conforming cross-references; amending s. 440.50, F.S.; conforming cross-references; amending s. 440.52, F.S.; deleting a fee for certain registration of insurance carriers; amending s. 624.4626, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 440.021, Florida Statutes, is amended to read:

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by judges of compensation claims are exempt from chapter 120, and no judge of compensation claims shall be considered an agency or a part thereof. Communications of the result of investigations by the department pursuant to s. 440.185(3) ~~s. 440.185(4)~~ are exempt from chapter 120. In all instances in which the department institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within 20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the department shall, if it

agrees with such protest, notify the protesting party that the assessment has been revoked. If the department does not agree with the protest, it shall refer the matter to the judge of compensation claims for determination pursuant to s. 440.25(2)-(5). Such action of the department is exempt from the provisions of chapter 120.

Section 2. Subsections (1), (2), (3), (5), (10), and (11) of section 440.05, Florida Statutes, are amended to read:

440.05 Election of exemption; revocation of election; notice; certification.

(1) Each corporate officer who elects not to accept the provisions of this chapter or who, after electing such exemption, revokes that exemption shall submit mail to the department ~~in Tallahassee~~ notice to such effect in accordance with a form to be prescribed by the department.

(2) Each sole proprietor or partner who elects to be included in the definition of “employee” or who, after such election, revokes that election must submit mail to the department ~~in Tallahassee~~ notice to such effect, in accordance with a form to be prescribed by the department.

(3) ~~Each officer of a corporation who is engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption must submit a notice to such effect to the department on a form prescribed by the department. The notice of election to be exempt must be electronically submitted to the department by the officer of a corporation who is allowed to claim an exemption as provided by this chapter and must list the name, federal tax identification number, date of birth, driver license number or Florida identification card number, and all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, the registration number of the corporation filed with the Division of Corporations of the Department of State, and the percentage of ownership evidencing the required ownership under this chapter. The notice of election to be exempt must identify each corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers provided in s. 440.02, and must certify that any employees of the corporation whose officer elects an exemption are covered by workers’ compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the department that the notice meets the requirements of this subsection, the department shall issue a certification of the election to the officer, unless the department determines that the information contained in the notice is invalid. The department shall revoke a certificate of election to be exempt from coverage upon a determination by the department that the person does not meet the requirements for exemption or that the information contained~~

in the notice of election to be exempt is invalid. The certificate of election must list the name of the corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new or different corporation that is not listed on the certificate of election. A ~~notice copy~~ of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, an officer who is a subcontractor or an officer of a corporate subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department, the department shall notify the workers' compensation carriers identified in the request for exemption.

(5) A notice given under subsection (1), subsection (2), or subsection (3) shall become effective when issued by the department or 30 days after ~~it an~~ an application for an exemption is received by the department, whichever occurs first. However, if an accident or occupational disease occurs less than 30 days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice is effective as of 12:01 a.m. of the day following the date it is submitted ~~mailed~~ to the department ~~in Tallahassee~~.

(10) Each officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter shall maintain business records as specified by the department by rule, ~~which rules must include the provision that any corporation with exempt officers engaged in the construction industry must maintain written statements of those exempted persons affirmatively acknowledging each such individual's exempt status.~~

(11) Any corporate officer permitted by this chapter to claim an exemption must be listed on the records of this state's Secretary of State, Division of Corporations, as a corporate officer. ~~The department shall issue a stop-work order under s. 440.107(7) to any corporation who employs a person who claims to be exempt as a corporate officer but who fails or refuses to produce the documents required under this subsection to the department within 3 business days after the request is made.~~

Section 3. Paragraphs (d) and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it

failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year period or \$1,000, whichever is greater.

a. For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation, by a representative from the employee leasing company, of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees, and proof of payment to the employee leasing company. The credit may not be applied unless the employer provides the documentation and proof of payment to the department within 28 days after service of the stop-work order or first order of penalty assessment upon the employer.

b. For employers who have not been previously issued a stop-work order or order of penalty assessment, the department must reduce the final assessed penalty by 25 percent if the employer has complied with administrative rules adopted pursuant to subsection (5) and has provided such business records to the department within 10 business days after the employer's receipt of the written request to produce business records.

c. The \$1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit and 25 percent reduction have been applied is less than \$1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 1.5 2.

Section 4. Paragraph (a) of subsection (7) and paragraphs (a), (c), and (f) of subsection (9) of section 440.13, Florida Statutes, are amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.

(7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

(a) Any health care provider, ~~carrier, or employer~~ who elects to contest the disallowance or adjustment of payment by a carrier under subsection (6) must, within 45 days after receipt of notice of disallowance or adjustment of payment, petition the department to resolve the dispute. The petitioner must serve a copy of the petition on the carrier and on all affected parties by certified mail. The petition must be accompanied by all documents and records that support the allegations contained in the petition. Failure of a petitioner to submit such documentation to the department results in dismissal of the petition.

(9) EXPERT MEDICAL ADVISORS.—

(a) The department shall certify expert medical advisors in each specialty to assist the department ~~and the judges of compensation claims~~ within the advisor's area of expertise as provided in this section. The department shall, in a manner prescribed by rule, in certifying, recertifying, or decertifying an expert medical advisor, consider the qualifications, training, impartiality, and commitment of the health care provider to the provision of quality medical care at a reasonable cost. As a prerequisite for certification or recertification, the department shall require, at a minimum, that an expert medical advisor have specialized workers' compensation training or experience under the workers' compensation system of this state and board certification or board eligibility.

(c) If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the department may, and the judge of compensation claims shall, upon his or her own motion or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier, order the injured employee to be evaluated by an expert medical advisor. The injured employee and the employer or carrier may agree on the health care provider to serve as an expert medical advisor. If the parties do not agree, the judge of compensation claims shall select an expert medical advisor from the department's list of certified expert medical advisors. If a certified medical advisor within the relevant medical specialty is unavailable, the judge of compensation claims shall appoint any otherwise qualified health care provider to serve as an expert medical advisor without obtaining the department's certification. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

(f) If the department or a judge of compensation claims orders the services of ~~an a-certified~~ expert medical advisor to resolve a dispute under this section, the party requesting such examination must compensate the

advisor for his or her time in accordance with a schedule adopted by the department. If the employee prevails in a dispute as determined in an order by a judge of compensation claims based upon the expert medical advisor's findings, the employer or carrier shall pay for the costs of such expert medical advisor. If a judge of compensation claims, upon his or her motion, finds that an expert medical advisor is needed to resolve the dispute, the carrier must compensate the advisor for his or her time in accordance with a schedule adopted by the department. The department may assess a penalty not to exceed \$500 against any carrier that fails to timely compensate an advisor in accordance with this section.

Section 5. Subsection (3) of section 440.185, Florida Statutes, is amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

~~(3) In addition to the requirements of subsection (2), the employer shall notify the department within 24 hours by telephone or telegraph of any injury resulting in death. However, this special notice shall not be required when death results subsequent to the submission to the department of a previous report of the injury pursuant to subsection (2).~~

Section 6. Subsection (3) of section 440.42, Florida Statutes, is amended to read:

440.42 Insurance policies; liability.—

(3) No contract or policy of insurance issued by a carrier under this chapter shall expire or be canceled until at least 30 days have elapsed after a notice of cancellation has been sent to the department and to the employer in accordance with the provisions of ~~s. 440.185(6)~~ s. 440.185(7). For cancellation due to nonpayment of premium, the insurer shall mail notification to the employer at least 10 days prior to the effective date of the cancellation. However, when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability, it shall be presumed that only that policy with the later effective date shall be in force and that the earlier policy terminated upon the effective date of the latter. In the event that both policies carry the same effective date, one of the policies may be canceled instanter upon filing a notice of cancellation with the department and serving a copy thereof upon the employer in such manner as the department prescribes by rule. The department may by rule prescribe the content of the notice of retroactive cancellation and specify the time, place, and manner in which the notice of cancellation is to be served.

Section 7. Paragraph (b) of subsection (2), paragraph (c) of subsection (4), paragraph (c) of subsection (6), paragraphs (c) and (d) of subsection (7), subsection (8), and paragraph (d) of subsection (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

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

~~(b) “Preferred worker” means a worker who, because of a permanent impairment resulting from a compensable injury or occupational disease, is unable to return to the worker’s regular employment.~~

In addition to the definitions contained in this subsection, the department may by rule prescribe definitions that are necessary for the effective administration of this section.

(4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY, TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER OTHER PHYSICAL IMPAIRMENT.—

(c) Temporary compensation and medical benefits; aggravation or acceleration of preexisting condition or circumstantial causation.—If an employee who has a preexisting permanent physical impairment experiences an aggravation or acceleration of the preexisting permanent physical impairment as a result of an injury or occupational disease arising out of and in the course of her or his employment, or suffers an injury as a result of a merger as defined in paragraph (2)(b) ~~(2)(e)~~, the employer shall provide all benefits provided by this chapter, but, subject to the limitations specified in subsection (7), the employer shall be reimbursed by the Special Disability Trust Fund created by subsection (9) for 50 percent of its payments for temporary, medical, and attendant care benefits.

(6) EMPLOYER KNOWLEDGE, EFFECT ON REIMBURSEMENT.—

(c) An employer’s or carrier’s right to apportionment or deduction pursuant to ss. 440.02(1), 440.15(5)(b), and 440.151(1)(c) does not preclude reimbursement from such fund, except when the merger comes within the definition of paragraph (2)(b) ~~(2)(e)~~ and such apportionment or deduction relieves the employer or carrier from providing the materially and substantially greater permanent disability benefits otherwise contemplated in those paragraphs.

(7) REIMBURSEMENT OF EMPLOYER.—

(c) A proof of claim must be filed on each notice of claim on file as of June 30, 1997, within 1 year after July 1, 1997, or the right to reimbursement of the claim shall be barred. A notice of claim on file on or before June 30, 1997, may be withdrawn and refiled if, at the time refiled, the notice of claim remains within the limitation period specified in paragraph (a). Such refiling shall not toll, extend, or otherwise alter in any way the limitation period applicable to the withdrawn and subsequently refiled notice of claim. ~~Each proof of claim filed shall be accompanied by a proof of claim fee as provided in paragraph (9)(d).~~ The Special Disability Trust Fund shall, within 120 days after receipt of the proof of claim, serve notice of the acceptance of the claim

for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

~~(d) Each notice of claim filed or refiled on or after July 1, 1997, must be accompanied by a notification fee as provided in paragraph (9)(d). A proof of claim must be filed within 1 year after the date the notice of claim is filed or refiled, accompanied by a proof of claim fee as provided in paragraph (9)(d), or the claim shall be barred. The notification fee shall be waived if both the notice of claim and proof of claim are submitted together as a single filing. The Special Disability Trust Fund shall, within 180 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).~~

~~(8) PREFERRED WORKER PROGRAM.—The Department of Education or administrator shall issue identity cards to preferred workers upon request by qualified employees and the Department of Financial Services shall reimburse an employer, from the Special Disability Trust Fund, for the cost of workers' compensation premium related to the preferred workers payroll for up to 3 years of continuous employment upon satisfactory evidence of placement and issuance of payroll and classification records and upon the employee's certification of employment. The Department of Financial Services and the Department of Education may by rule prescribe definitions, forms, and procedures for the administration of the preferred worker program. The Department of Education may by rule prescribe the schedule for submission of forms for participation in the program.~~

~~(8)(9) SPECIAL DISABILITY TRUST FUND.—~~

~~(d) The Special Disability Trust Fund shall be supplemented by a \$250 notification fee on each notice of claim filed or refiled after July 1, 1997, and a \$500 fee on each proof of claim filed in accordance with subsection (7). Revenues from the fee shall be deposited into the Special Disability Trust Fund and are exempt from the deduction required by s. 215.20. The fees provided in this paragraph shall not be imposed upon any insurer which is in receivership with the department.~~

Section 8. Paragraph (b) of subsection (1) of section 440.50, Florida Statutes, is amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)

(b) The department is authorized to transfer as a loan an amount not in excess of \$250,000 from such special fund to the Special Disability Trust Fund established by s. 440.49(8) ~~s. 440.49(9)~~, which amount shall be repaid to the said special fund in annual payments equal to not less than 10 percent of moneys received for the such Special Disability Trust Fund.



Section 9. Subsection (1) of section 440.52, Florida Statutes, is amended to read:

440.52 Registration of insurance carriers; notice of cancellation or expiration of policy; suspension or revocation of authority.—

(1) Each insurance carrier who desires to write workers' such compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the department and ~~pay a registration fee of \$100. This shall be deposited by the department in the fund created by s. 440.50.~~

Section 10. Subsection (2) of section 624.4626, Florida Statutes, is amended to read:

624.4626 Electric cooperative self-insurance fund.—

(2) A self-insurance fund that meets the requirements of this section is subject to the assessments set forth in ~~ss. 440.49(8) ss. 440.49(9)~~, 440.51(1), and 624.4621(7), but is not subject to any other provision of s. 624.4621 and is not required to file any report with the department under s. 440.38(2)(b) which is uniquely required of group self-insurer funds qualified under s. 624.4621.

Section 11. This act shall take effect October 1, 2016.

Approved by the Governor March 10, 2016.

Filed in Office Secretary of State March 10, 2016.