



Alerts

Workers' Comp Plaintiff Attorneys Might Be Getting a Bigger Payday in Florida

April 22, 2016

Employment Practices Alert

On April 20, 2016, the 1st District Court of Appeals fired the most significant shot in years at controversial attorney fee restrictions in Florida.

In 2003, the Florida State Workers' Compensation Statute placed strict limits on claimant/plaintiff attorney fees which were awarded on a contingency basis and, in many cases, limited to a cap of \$1,500. The right of an individual to contract with an attorney and pay a retainer was barred. It was a criminal offense for an attorney to accept a fee not approved by a Judge of Compensation Claims (JCC).

In an appeal from a decision issued by Tampa JCC Mark Massey, a three-judge DCA panel found that the statutory restriction on fees caused an inability to retain counsel, as it was not financially possible for attorneys to represent the claimant, *Miles v. City of Edgewater Police Department*, Case 1D15-0165 (Fla. 1st DCA 2016). The plaintiff argued that the restriction on fees violated her First Amendment rights of free speech, freedom of association, and freedom to petition for redress. The Court held that the injured worker can waive these limitations and agree to pay the attorney with his or her own, or another entity's, funds, subject to a JCC ruling that the fee is reasonable.

Based on this decision, Workers' Compensation attorneys can now contract on a contingency or hourly basis, thereby taking larger portions of a settlement than the previous statute would allow, so long as it is "reasonable." Those amounts could be up to 40% of the total settlement, rather than the current statutorily mandated 20%-15%-10% sliding scale. This holding will likely cause settlement "bottom line demands" to become higher as claimant attorneys will look to take a larger cut from the worker's compensation carrier rather than their client. A \$10,000 settlement, with \$1,750 paid to the attorney and \$8,250 paid to the claimant, is now going to be a \$13,500-\$14,000 settlement, with the same amount going to the claimant.

It is very important to note that this decision is still in flux, and there are two ways that this holding could be modified. First, Florida Rule of Appellate Procedure 9.030(A)(1)(a)(ii) holds that if a District Court finds a state statute to be invalid, the case shall be reviewed by appeal by the Florida Supreme Court. Second, the *Castellanos* attorney fee case, as well as its progeny, is still awaiting decision at the Florida Supreme Court, where a decision has been pending for approximately two years. A decision in *Castellanos* will very likely address, impact, and possibly refine this week's holding.

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