



# Restoring a Workers' Compensation System that Works

By Tammy Perdue

The business community is once again unanimous and strong in its commitment to keep one of the country's smoothest-running workers' comp systems intact.

**W**orkers' compensation is an important concern for both Florida businesses and their employees. Florida law requires employers to purchase coverage so workers who are injured on the job have ready access to medical care, receive monetary benefits while they are unable to work and get the vocational assistance they need to return to work as quickly as possible.

## Background

Over the past decade, the state's workers' compensation market experienced turbulent periods putting it on the verge of collapse. In the late 1990s and early 2000s, Florida companies were hard pressed to find coverage. Even when it was available, prices were astronomical forcing companies to either avoid obtaining coverage or go out of business. At the time, Florida's compensation rates were among the highest in the country and a barrier to creation of jobs and successful competition with bordering states for new business and industry.

Associated Industries of Florida (AIF) recognized the urgent need for significant system reform and established the Workers' Compensation Coalition of Business and Insurance Industry. The coalition was formed to educate lawmakers about the nature of the system, its potential for failure or success, and develop viable solutions that would reduce fraud, lower rates and create a healthy workers' compensation market. AIF's efforts paid off in 2003 when the Florida Legislature tackled this crisis in a broad-based package focusing on cost-drivers clearly out of line with workers' comp systems in other states, specifically the abuse of hourly attorneys' fees.

Prior to 2003, the cost of litigated claims was 40 percent higher in Florida than in any other state due to Florida's higher litigation volume. The 2003 reforms eliminated payments based on hours worked and linked attorney fees to the value of benefits secured through a fee percentage schedule. The impact of this provision, along with the other reforms to the system, has been significant.

According to the National Council on Compensation Insurance (NCCI), Florida's workers' compensation rates have dropped an average of 60 percent since the law was enacted, saving Florida employers an estimated \$2.9 billion. Once ranked first or second in the nation, Florida's rates now rank in the lowest third of workers' compensation rates and have a fair and predictable cost structure. Subse-

quently, a robust market has developed making coverage readily available. This allows Florida's employers to hire more workers, expand their businesses and secure projects on fair footing with their out-of-state competitors.

The cornerstone to these successes has been reduced litigation and attorney fees. Before this law passed, lawyers regularly collected thousands of dollars in fees on most litigated cases, even if their clients only received minimal benefits. Such occurrences have virtually disappeared from the system since the new law was passed.

### The Current Problem

However, these changes have met strong opposition from the lawyers who are no longer able to generate exorbitant fees through protracted litigation surrounding minimal benefits to injured workers. Since 2003, claimants' lawyers have tried to overturn the attorney fee reforms and finally succeeded in the October 2008 case of *Murray v. Mariner Health*. The Florida Supreme Court ruling in this case delivered a blow to Florida employers that will inevitably increase the cost of doing business and could derail the current success of Florida's workers' compensation system. It declared the attorney fee portion of the workers' compensation statute to be ambiguous and allowed a return to the unpredictable and costly hourly rate fee awards. Unless remedied through legislative action, this decision means employers will face higher workers' compensation rates and an added financial burden to the cost of doing business in our state.

In November 2008 following the release of the Murray decision, the NCCI — the state's rate filing entity — proposed a premium increase of 18.6 percent to be incrementally implemented over the next two years beginning April 1, 2009. Claims handling professionals across the state have already seen an uptick in litigation filed on open cases, as well as higher settlement values resulting from the increased attorney fee amounts. Most agree the NCCI rate proposal is conservative and fails to capture cultural changes occurring throughout the system due to predictable fee amounts available over the past five years. If claim costs skyrocket, it is feared that availability of coverage will once again be an obstacle to the survival of Florida businesses.

Without a doubt, the resurrection of hourly fee awards will bring an end to rate decreases for Florida employers. Within a few months, the system will head back down the spiraling litigation path that necessitated the 2003 reforms. This prediction is more than just a doomsday cry. Florida's Insurance Commissioner Kevin McCarty also links the system's success to the 2003 attorneys' fee statute recently stating, "The reduction of attorney participation in workers'

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compensation cases has been cited as one of the significant causes of the reduction in rates since the 2003 legislative reforms ... Limitations on attorney fees have helped Florida employers to realize a significant savings on their workers' compensation insurance."

### Crafting a Solution

The *Murray v. Mariner Health* ruling means higher attorney fees, an increase in the number of claims with attorney involvement and an increase in the average cost per workers' comp case. These higher costs will inevitably toss Florida's workers' compensation system right back into the chaos experienced in 2003. Florida employers cannot afford or even survive in today's economy if their workers' compensation rates are increased and the system destabilizes. Rewarding higher litigation rates and increasing costs are ill-advised and dangerous policies that should not be imposed on the businesses of this state. The Legislature must act immediately to address the Supreme Court's decision and restore Florida's workers' compensation system to the self-executing model of efficient benefit delivery it clearly intended with the 2003 reforms.

Fortunately, the business community is once again unanimous and strong in its commitment to keep one of the country's smoothest-running workers' comp systems intact. Imploring the Legislature to address the Supreme Court's decision is one of AIF's highest priorities this session. An increase in workers' comp premiums is the last thing our economy needs. Florida employers should not have to shoulder additional costs as they struggle to ride out the country's and Florida's economic downturn.

For more information on Florida's workers' compensation system and how your business can get involved in the fight to restore success to Florida's workers' compensation system, please contact AIF's general counsel Tamela Perdue who chairs Florida's Workers' Compensation Coalition for Business and Insurance or log onto [www.aif.com](http://www.aif.com) and join the Coalition today. ■

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