

By Representative Merchant

1 A bill to be entitled
2 An act relating to workers' compensation;
3 amending s. 440.09., F.S.; excluding coverage
4 under the Defense Base Act; amending s. 440.15,
5 F.S.; providing for cessation of entitlement to
6 certain payments under certain circumstances;
7 providing for offsets against certain payments
8 under certain circumstances; amending s.
9 440.34, F.S.; providing limits on attorney's
10 fees; repealing s. 440.02(34)(f), F.S.,
11 relating to the definition of catastrophic
12 injury; repealing s. 440.15(6), F.S., relating
13 to the obligation to rehire; providing an
14 effective date.

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

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18 Section 1. Subsection (2) of section 440.09, Florida
19 Statutes, is amended to read:

20 440.09 Coverage.--

21 (2) Benefits are not payable in respect of the
22 disability or death of any employee covered by the Federal
23 Employer's Liability Act, the Longshoremen's and Harbor
24 Worker's Compensation Act, the Defense Base Act, or the Jones
25 Act.

26 Section 2. Paragraph (d) of subsection (1) of section
27 440.15, Florida Statutes, 1996 Supplement, is amended, and
28 subsection (14) is added to said section, to read:

29 440.15 Compensation for disability.--Compensation for
30 disability shall be paid to the employee, subject to the
31 limits provided in s. 440.12(2), as follows:

1 (1) PERMANENT TOTAL DISABILITY.--

2 (d)1. If an employee who is being paid compensation
3 for permanent total disability becomes rehabilitated to the
4 extent that he establishes an earning capacity, he shall be
5 paid, instead of the compensation provided in paragraph (a),
6 benefits pursuant to subsection (3). The division shall adopt
7 rules to enable a permanently and totally disabled employee
8 who may have reestablished an earning capacity to undertake a
9 trial period of reemployment without prejudicing his return to
10 permanent total status in the case that such employee is
11 unable to sustain an earning capacity.

12 2. Entitlement to permanent and total disability
13 payments shall cease at age 62 if the employee is eligible for
14 Federal social security benefits of any category, whether or
15 not the employee has applied for such benefits.

16 (14) OFFSETS.--Payments under this section, regardless
17 of category, shall be offset by the full amount of moneys paid
18 by the employer under any salary continuation plan or
19 severance pay provided to an employee if the employee is laid
20 off for reasons other than the injury.

21 Section 3. Subsections (1), (2), and (3) of section
22 440.34, Florida Statutes, are amended to read:

23 440.34 Attorney's fees; costs.--

24 (1) A fee, gratuity, or other consideration may not be
25 paid for services rendered for a claimant in connection with
26 any proceedings arising under this chapter, unless approved as
27 reasonable by the judge of compensation claims or court having
28 jurisdiction over such proceedings. Except as provided by this
29 subsection, any attorney's fee approved by a judge of
30 compensation claims for services rendered to a claimant must
31 equal to 20 percent of the first \$5,000 of the amount of the

1 benefits secured, 15 percent of the next \$5,000 of the amount
2 of the benefits secured, 10 percent of the remaining amount of
3 the benefits secured to be provided during the first 10 years
4 after the date the claim is filed, and 5 percent of the
5 benefits secured after 10 years. However, the judge of
6 compensation claims shall consider the following factors in
7 each case and may increase or decrease the attorney's fee if,
8 in his judgment, the circumstances of the particular case
9 warrant such action:

10 (a) The time and labor required, the novelty and
11 difficulty of the questions involved, and the skill requisite
12 to perform the legal service properly.

13 (b) The fee customarily charged in the locality for
14 similar legal services.

15 (c) The amount involved in the controversy and the
16 benefits resulting to the claimant.

17 (d) The time limitation imposed by the claimant or the
18 circumstances.

19 (e) The experience, reputation, and ability of the
20 lawyer or lawyers performing services.

21 (f) The contingency or certainty of a fee.

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23 The fee shall not exceed \$150 per hour for attorneys and \$45
24 per hour for paralegals, or the hourly rate paid by the
25 employer to its attorneys and paralegals, whichever is the
26 lower hourly rate.

27 (2) In awarding a reasonable claimant's attorney's
28 fee, the judge of compensation claims shall consider only
29 those benefits to the claimant that the attorney is
30 responsible for securing. The amount, statutory basis, and
31 type of benefits obtained through legal representation shall

1 be listed on all attorney's fees awarded by the judge of
2 compensation claims. For purposes of this section, the term
3 "benefits secured" means benefits obtained as a result of the
4 claimant's attorney's legal services rendered in connection
5 with the claim for benefits. However, such term does not
6 include future medical benefits to be provided on any date
7 more than 5 years after the date the claim is filed. Amounts
8 reimbursable to a third party payor by an employer-carrier
9 whose coverage was secured in whole or in part by payments by
10 such employer-carrier shall not be included in the definition
11 of benefits secured.

12 (3) If the claimant should prevail in any proceedings
13 before a judge of compensation claims or court, there shall be
14 taxed against the employer the reasonable costs of such
15 proceedings, not to include the attorney's fees of the
16 claimant. A claimant shall be responsible for the payment of
17 his own attorney's fees, except that a claimant shall be
18 entitled to recover a reasonable attorney's fee from a carrier
19 or employer:

20 (a) Against whom he successfully asserts a claim for
21 medical benefits only, if the claimant has not filed or is not
22 entitled to file at such time a claim for disability,
23 permanent impairment, wage-loss, or death benefits, arising
24 out of the same accident; or

25 (b) In any case in which the employer or carrier files
26 a notice of denial with the division and the injured person
27 has employed an attorney in the successful prosecution of his
28 claim; or

29 (c) In a proceeding in which a carrier or employer
30 denies that an injury occurred for which compensation benefits
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1 are payable, and the claimant prevails on the issue of
2 compensability; or
3 (d) In cases where the claimant successfully prevails
4 in proceedings filed under s. 440.24 or s. 440.28.
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6 In applying the factors set forth in subsection (1) to cases
7 arising under paragraphs (a), (b), (c), and (d), the judge of
8 compensation claims must only consider only such benefits and
9 the time reasonably spent in obtaining them as were secured
10 for the claimant within the scope of paragraphs (a), (b), (c),
11 and (d). No prejudgment or postjudgment interest shall be
12 included on attorney's fees awarded pursuant to this chapter.
13 Section 4. Paragraph (f) of subsection (34) of section
14 440.02, Florida Statutes, and subsection (6) of section
15 440.15, Florida Statutes, 1996 Supplement, are hereby
16 repealed.
17 Section 5. This act shall take effect October 1, 1997.

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20 HOUSE SUMMARY

21 Revises workers' compensation provisions relating to
22 entitlement to disability payments, offsets against
23 payments, and attorney's fees. See bill for details.
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