

NCOIL Presentation

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The 2020 Florida Statutes

Title XXXI
LABOR

Chapter 440
WORKERS' COMPENSATION

[View Entire Chapter](#)

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:(1) “Accident” means only an unexpected or unusual event or result that happens suddenly. Disability or death due to the accidental acceleration or aggravation of a venereal disease or of a disease due to the habitual use of alcohol or controlled substances or narcotic drugs, or a disease that manifests itself in the fear of or dislike for an individual because of the individual’s race, color, religion, sex, national origin, age, or handicap is not an injury by accident arising out of the employment. Subject to s. [440.15\(5\)](#), if a preexisting disease or anomaly is accelerated or aggravated by an accident arising out of and in the course of employment, only acceleration of death or acceleration or aggravation of the preexisting condition reasonably attributable to the accident is compensable, with respect to any compensation otherwise payable under this chapter. **An injury or disease caused by exposure to a toxic substance, including, but not limited to, fungus or mold, is not an injury by accident arising out of the employment unless there is clear and convincing evidence establishing that exposure to the specific substance involved, at the levels to which the employee was exposed, can cause the injury or disease sustained by the employee.**

CITY OF TITUSVILLE v. TAYLOR

No. 1D17-3814.

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288 So.3d 731 (2019)

CITY OF TITUSVILLE and Johns Eastern Company, Inc., Appellants, v. Robert TAYLOR, Appellee.

District Court of Appeal of Florida, First District.

November 27, 2019.

Rehearing Denied January 23, 2020.

Wolf, J., concurring.

I am constrained to concur because of this court's interpretation of section 440.02(1), Florida Statutes, in *Altman Contractors v. Gibson*, [63 So.3d 802](#) (Fla. 1st DCA 2011). This case and *Gibson* reject the use of overwhelming circumstantial evidence to prove the statutory requirements of clear and convincing evidence in toxic exposure cases. Direct proof of the level of exposure to the toxic substance is simply not available in a great number of toxic exposure cases.*

I am, therefore, not convinced that workers' compensation is a viable alternative to the tort system for workers that are injured by toxic exposure at the work place. Either the court system or the Legislature must deal with this problem.

JIMMY PATRONIS ORDERS WORKERS' COMP FOR CORONAVIRUS-INFECTED STATE EMPLOYEES

36 claims are already awaiting an answer.

BY RENZO DOWNEY / MARCH 31, 2020

Today, Florida Chief Financial Officer (CFO) and State Fire Marshal Jimmy Patronis directed the Division of Risk Management to provide workers' compensation coverage to state employees who are fighting COVID-19. The directive provides coverage for state officials whose responsibilities require them to interface with individuals who are potentially infected with the coronavirus.

CFO Jimmy Patronis said, “If we’re going to ask our public servants to fight this pandemic on our behalf, they have to know we’ve got their backs if they get sick. COVID-19 is taking some of our public servants off their feet for weeks. Workers' compensation insurance was developed to provide our public servants a way to cover a portion of their lost wages and medical costs, so their families don’t have to worry as much. Providing this important coverage to our men and women on the front line is just the right thing to do.”

Under the CFO’s directive, state agencies can choose to opt-out of coverage. To date, the Division of Risk Management has received 36 claims for COVID-19. Additionally, the Florida League of Cities recently announced the Florida Municipal Insurance Trust will cover first responders’ COVID-19 claims. While the severity and duration of recovery for COVID-19 varies with each patient, generally individuals recover after two weeks.

Read Full Story Here: <https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5515>

S.3607 - Safeguarding America's First Responders Act of 2020

Public Law 116–157
116th Congress

An Act

Aug. 14, 2020
[S. 3607]

To extend public safety officer death benefits to public safety officers whose death is caused by COVID–19, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Safeguarding America’s First Responders Act of 2020”.

SEC. 2. SENSE OF CONGRESS; PURPOSE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—
(1) an infectious disease pandemic known as COVID–19 exists;

(2) to date, there is much still unknown about COVID–19, but it is known that COVID–19 and related complications may be fatal;

(3) services provided by public safety officers are nonetheless essential during this pandemic;

(4) due to the COVID–19 pandemic and what is currently known about how the disease is spread, public safety officers are uncharacteristically at risk of contracting the disease; and

(5) although the Public Safety Officers’ Benefits program currently covers deaths and permanent and total disabilities resulting from infectious disease sustained by public safety officers in carrying out their duties, the determination of claims involving personal injuries believed to have resulted from COVID–19 or its complications may be uniquely challenging or delayed given the lack of—

(A) definitive testing and medical records at this time; and

(B) a definitive uniform body of medical information about how the disease is spread or its effects.

(b) PURPOSE.—The purpose of this Act is to establish a carefully drawn framework wherein claims under the Public Safety Officers’ Benefits program, arising under the unique circumstances described in subsection (a), can be processed expeditiously and under fair and clear standards.

SEC. 3. PUBLIC SAFETY OFFICER BENEFITS.

(a) DEATH BENEFITS.—As determined by the Bureau of Justice Assistance, unless competent medical evidence establishes that the death of a public safety officer (as defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968

(34 U.S.C. 10284)) was directly and proximately caused by something other than COVID–19, COVID–19 (or complications therefrom) suffered by the public safety officer shall be presumed to constitute a personal injury within the meaning of section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(a)), sustained in the line of duty by the officer and directly and proximately resulting in death, if—

(1) the officer engaged in a line of duty action or activity between January 1, 2020, and December 31, 2021;

(2) the officer was diagnosed with COVID–19 (or evidence indicates that the officer had COVID–19) during the 45-day period beginning on the last day of duty of the officer; and

(3) evidence indicates that the officer had COVID–19 (or complications therefrom) at the time of the officer’s death.

(b) DISABILITY BENEFITS.—As determined by the Bureau of Justice Assistance, COVID–19 (or complications therefrom) suffered by a public safety officer shall be presumed to constitute a personal injury within the meaning of section 1201(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(b)), sustained in the line of duty by the officer, if—

(1) the officer engaged in a line of duty action or activity between January 1, 2020, and December 31, 2021; and


(2) the officer was diagnosed with COVID–19 (or evidence indicates that the officer had COVID–19) during the 45-day period beginning on the last day of duty of the officer.

Approved August 14, 2020.

Safeguarding
America’s First
Responders Act
of 2020.
34 USC 10281
note.

Proposed Legislation for 2021 Florida Session

- (COVID-19)
- A proposal to create Section 112.1817 of the 2019 Florida Statutes; *Firefighters and law enforcement or correctional officers; special provisions relative to disability.*
- (1) Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) caused by the coronavirus disease 2019, or COVID-19, resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. Such presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract. *The presumption shall apply to any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) who performs duties pertaining to those roles and involving interactions with the public during the public health emergency declared by Executive Order number 20-51, as extended by subsequent executive orders.*
- (2) This section authorizes each governmental entity specified in subsection (1) to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage which shall include the presumption that any condition or impairment of health of any firefighter, law enforcement officer, or correctional officer caused by the coronavirus disease 2019, or COVID-19, resulting in total or partial disability or death was accidental and suffered in the line of duty, unless the contrary be shown by competent evidence.



Restore Economic Strength through Employment & Tourism (RESET)

TASK FORCE

As a top priority for Florida businesses as well, the RESET Task Force is proud to release these liability protection recommendations now to help facilitate the discussion on how best to protect businesses as our state continues to safely reopen.”

The RESET Task Force’s liability protection policy recommendations include:

- Exempting essential businesses entirely from COVID-19 liability;
- A heightened culpability standard: to establish liability, the defendant must have acted with gross negligence or intentional conduct;
- A heightened evidentiary standard: clear and convincing evidence is required to establish liability, rather than a mere preponderance of the evidence;
- A shortened statute of limitations so that businesses will not face COVID-19 liability years after the pandemic has passed; and
- Protections for employers from employees’ COVID-19 related claims, including in any enforcement actions brought under state law, so long as the employer complied with applicable guidelines.

<http://aif.com/information/2020/pr201001.html>