

POLICY BACKGROUNDER: WORKERS' COMPENSATION

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Topics covered in this backgrounder:

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Updated 7/14/2021

The Law

Workers' compensation law in Florida is governed by [Chapter 440 of the statutes](#), which requires most employers to purchase the coverage for workers who are injured on the job, regardless of fault. The law also makes employers immune from some lawsuits over workplace injuries. [F.S. 627.096](#) requires a Workers' Compensation Rating Bureau to compile data for assessing rate filings by workers' comp insurers.

The Market

According to the Office of Insurance Regulation's [2020 Workers' Compensation Annual Report](#), there are more than 250 insurers who offer workers' comp coverage, and who wrote more than \$3.1 billion worth of coverage in 2019. Florida was third in the nation in direct premium written, behind California and New York. No one company dominates the Florida market - the largest workers' comp insurer in the state by premium in 2019, Bridgefield Employers Insurance Co., had under 6% of the market share in 2019, and the largest 10 insurers together held under 40% of the market. Among insurer groups, the largest, American Financial Group, had under 12% of the market share in the state. Bridgefield Employers is a member of the American Financial Group. Among the top three states, Florida is the only one in which a private insurer, rather than a state fund, is the top writer of workers' comp policies.

NCCI

Each year, an organization called the [National Council on Compensation Insurance](#), or NCCI, a licensed rating organization, makes recommended rate filings on behalf of all the workers' compensation insurance companies in Florida. The rate filings are then considered by the Florida Office of Insurance Regulation.

Legislation and Litigation

Legislative debates over workers' comp typically have involved rates paid by employers. Legislation ([SB 50A](#)) passed during a special session of the Legislature in 2003 [was aimed at increasing the availability and affordability of coverage](#) for employers, with Florida having had some of the highest workers' comp rates in the nation in the early 2000s. ([Also see: Department of Financial Services summary of HB 50A](#)). The measure aimed to reduce fraud, but it also sought to lower rates through a cap on attorneys' fees.

The bill did lower rates, which dropped by more than 60% over the rest of the decade after the measure passed. While Florida had earlier regularly ranked as the state with the highest or second-highest rates in the country, [it dropped to 28th by 2008 and 40th by 2010](#). But in the 2010s, rates started to again increase, particularly after some significant court decisions.

In 2008, the Florida Supreme Court ruled in [Murray v. Mariner Health](#) that the mandatory lawyer fee caps couldn't be squared with another part of law that said attorneys should get "reasonable" rates. The Legislature dealt with that, however, in 2009, by passing [HB 903](#), deleting the requirement that lawyers be paid "reasonable" fees, restoring the 2003 fee caps. But in [April of 2016](#), the Florida Supreme Court in [Castellanos v. Next Door](#) determined that the fee schedule from the 2003 reforms [was unconstitutional](#) as a [violation of due process rights](#). Then, in June of the same year, the Supreme Court, in [St. Petersburg v. Westphal](#), also [found unconstitutional](#) a part of the law that had [cut off temporary disability benefits](#) to some workers who weren't yet eligible for permanent benefits, creating a gap in coverage for care. Rates went up in 2017 after the rulings by nearly 15%, with the two court cases getting the blame. Rising medical costs were also blamed.

Recent Rate Approvals

But after the "correction" in rates following the court cases, [workers' comp premiums](#)

[started another period of declines](#). OIR [approved a 13.8% decrease in rates for 2019](#), and a [7.5% drop in 2020](#). In November of 2020, [OIR approved another rate decrease](#), this one of 6.6% for 2021.

Recent Legislation

2021

Lawmakers passed and the governor signed [SB 366](#), which makes students in work programs eligible for workers compensation coverage through their schools.

Additional Resources

[More on the 2016 workers' comp court cases](#)

[Florida Senate Interim Report on 2003 Workers' Comp Reforms](#)

[Florida Office of Insurance Regulation 2020 Workers' Compensation Annual Report](#)

[OIR Workers' Comp Page](#)

[CFO's Division of Workers' Compensation](#)

[Workers' Comp Rule Notices](#)

[Workers' Comp Injury Facts \(National Stats from NCCI Data\)](#)

Recent News

["OIR Approves a 6.6% Decrease to Florida's Workers' Compensation Insurance Rates,"](#)
12-2-20, OIR Press Release

["Florida Workers' Comp Rates Going Down, Again,"](#) 9-4-2020, Insurance Journal

["Fell Over a Dog: Strange Workers' Comp Case Goes to Florida Supreme Court",](#)



6-27-2019, News Service of Florida

["What's New in Florida Workers' Compensation: 2018"](#), 6-21-2018, LexisNexis

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