

FLORIDA

Legal Changes Have Sharply Reduced Worker Benefits, Benefited Insurers

According to a workers' compensation insurance industry expert, in the early 2000s, Florida had become one of the most expensive states in which to purchase coverage. As a result, Governor Jeb Bush called a special 2003 summer session, during which the Legislature passed sweeping changes to workers' compensation laws.¹ These changes led to both reductions in employee benefits and improved conditions for insurance carriers, trends that largely continue through 2013-2017, the period studied for this year's report on *Workers' Compensation Benefits, Costs, and Coverage*.

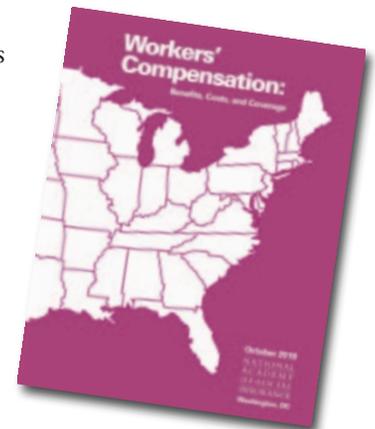
In response to the legislative changes, standardized benefits (benefits per \$100 of payroll) declined substantially in subsequent years. A large majority of this decline took place between 2005 and 2006, when standardized benefits fell by \$0.28 (from \$1.31 to \$1.03), or 21.7%. Following this initial decrease, they fluctuated between \$1.00 and \$1.17 from 2007 to 2013.²

A description of the legislation's effects by Rafael Gonzalez, a workers' compensation pharmacy benefit manager executive, helps explain these declines: "The changes brought about a reduction in benefits, narrowing of medical care, changes in burden of proof, limitations on attorney fees, procedural changes mandating a more expedited litigation progress, and timely payments and fraud punishments."³

A primary objective of the 2003 legal changes: improving the business climate for the workers' compensation insurance industry.

Moreover, benefits have since continued to fall. From 2013-2017, the period studied for this report, Florida had the seventh-largest decline in standardized cash benefits (of 25.5%). It also experienced substantial declines in medical benefits and one of the ten largest decreases in total benefits (cash and medical) per \$100 of covered payroll. These trends contributed to Florida experiencing its lowest level of total standardized benefits in the past twenty-one years of data—\$0.89—in 2017.

Over this period, the state achieved what Governor Bush had cited as a primary objective of the 2003 legal changes: improving the business climate for the workers' compensation insurance industry. As Gonzalez notes,



1 Gonzalez, Rafael. *Florida Workers' compensation Insurance Rates Decrease by 5.2% in 2015, down by More than 57% since the 2003 Reforms*. p.1 [https://www.google.com/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiXgaiqxe7kAhXQT98KHfbsDzsQFjAAegQIAhAC&url=http%3A%2F%2Fwww.wccp.org%2Fresource%2Fresmgr%2Ffiles%2F\(WC29\)_Florida_Workers%25E2%2580%2599_Comp.pdf&csug=AOvVaw1gRiNKhy2pPMBop6tkD1uv](https://www.google.com/url?sa=t&rcct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwiXgaiqxe7kAhXQT98KHfbsDzsQFjAAegQIAhAC&url=http%3A%2F%2Fwww.wccp.org%2Fresource%2Fresmgr%2Ffiles%2F(WC29)_Florida_Workers%25E2%2580%2599_Comp.pdf&csug=AOvVaw1gRiNKhy2pPMBop6tkD1uv) Data on premiums in Florida confirm these assertions, increasing substantially between 1999 and 2003, then dropping sharply through 2010. NCCI Annual Statistical Bulletin, Florida Premium Level Changes, 2019.

2 National Academy of Social Insurance estimates based on historical data.

3 Gonzalez report.

the same state that had been an excessively expensive one for the industry in 2000 was, by 2015, home to four of the top ten premium writers.

Florida's judiciary, however, concluded that some of the 2003 changes had gone too far: "In August [2014], a Florida circuit court judge ruled that the state's workers' comp law was unconstitutional, saying benefits had been 'decimated' and the law 'fails miserably' as to safety, health, welfare and morals."

In June 2016, the state Supreme Court agreed with much of the lower court's findings. It ruled 5-2 in *Westphal v. City of St. Petersburg* that the section of the law limiting coverage for temporary total disability benefits to two years was unconstitutional because it created a gap in coverage. Two months earlier, in *Castellanos v. Next Door Co.*, the Court had overturned as unconstitutional another section of the law that limited attorneys' fees based on benefits the injured worker recovered.

While the rate of decline in worker benefits has slowed in recent years, the effects of Florida's 2003 changes to the state's workers' compensation law seemingly continue to have an impact on all three of the system's stakeholders: workers, employers, and insurers.

In a concurring opinion[], Justice R. Fred Lewis wrote that he thinks the broader workers' compensation system "is fundamentally unconstitutional and in need of legislative — not judicial — reform. ... I have a full appreciation for the judicial attempts to save the workers' compensation statute from total disaster, ... Florida needs a valid workers' compensation program, but the charade is over. Enough is enough, and Florida workers deserve better."

4 Michael Grabell and Howard Berkes, "The Demolition of Workers' Comp," *ProPublica* and *National Public Radio*. March 4, 2015.