




Workers' Compensation - Charlie Douglas

A Trade-Off DOUGLAS
LAW FIRM

Employee gives up a right to a common-law action for negligence against employer or co-worker...



A Trade-Off DOUGLAS
LAW FIRM



...in exchange for strict liability and the rapid recovery of benefits.




An Exception DOUGLAS
LAW FIRM

Employee Can Sue His Employer For
An Intentional Tort

An Exception DOUGLAS
LAW FIRM

Employee Can Sue His Employer For
An Intentional Tort


WHAT IS
"INTENTIONAL"?

An Exception DOUGLAS
LAW FIRM

THE EMPLOYER:

- Engaged in conduct that it knew, based upon explicit warnings specifically identifying a known danger, was virtually certain to result in death or injury to the employee and,

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An Exception DOUGLAS
LAW FIRM

THE EMPLOYER:

- Engaged in conduct that it knew, based upon explicit warnings specifically identifying a known danger, was virtually certain to result in death or injury to the employee and,

The employee was not aware of the risk was not apparent and,

An Exception DOUGLAS
LAW FIRM

THE EMPLOYER:

- Engaged in conduct that it knew, based upon explicit warnings specifically identifying a known danger, was virtually certain to result in death or injury to the employee and,
- The employee was not aware of the risk was not apparent and,

The employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising an informed judgment and,

An Exception DOUGLAS
LAW FIRM

THE EMPLOYER:

- Engaged in conduct that it knew, based upon explicit warnings specifically identifying a known danger, was virtually certain to result in death or injury to the employee and,
- The employee was not aware of the risk was not apparent and,
- The employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising an informed judgment and,

The conduct was a legal cause of the employees' injury or death.

An Exception DOUGLAS
LAW FIRM

THE EMPLOYER:

- Engaged in conduct that was based upon explicit warnings specifically identifying a known danger, was fully aware of the death or injury to the employee and,
- The employee was not aware of the risk was not apparent and,
- The employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising an informed judgment and,
- The conduct was a legal cause of the employees' injury or death.

An Exception DOUGLAS
LAW FIRM

THE EMPLOYER:

- Engaged in conduct that was based upon explicit warnings specifically identifying a known danger, was fully aware of the death or injury to the employee and,
- The employee was not aware of the risk was not apparent and,
- The employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising an informed judgment and,
- The conduct was a legal cause of the employees' injury or death.

**EMPLOYEE CAN STILL SUE A
THIRD-PARTY FOR NEGLIGENCE**

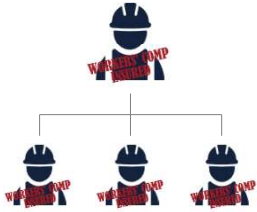
**WHO MUST
HAVE IT?**

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CONSTRUCTION INDUSTRY	NON-CONSTRUCTION INDUSTRY	AGRICULTURAL INDUSTRY
		
1 Employee (At Least)	4 Or More Employees	6 Or More Employees

Subcontractors

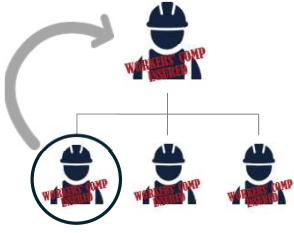
Contractors are required to make certain that all subcontractors have the required Workers' Compensation Insurance before they begin work on a project. See 69L-6.032 Florida Administrative Code.



DOUGLAS LAW FIRM

Subcontractors





If the subcontractor does not have Workers' Compensation insurance, they become the employee of the Contractor. The Contractor is responsible for paying benefits for the work-related injury, illness or fatality.



DOUGLAS LAW FIRM




Penalties For: DOUGLAS
— LAW FIRM —

 <p>Understating or concealing payroll</p>	 <p>Ignoring stop-work order</p>
 <p>Misclassify an employee as an independent contractor</p>	 <p>Discharge or threaten to discharge an employee for filing or attempting to file a worker's comp claim</p>



Disqualifications DOUGLAS
LAW FIRM

- Employee must report within 30 days
- Can't be intoxicated/under the influence at time of injury
- Pre-existing injury is the cause of more than half of the need for medical treatment
- 2 years to file a claim
- Must treat once a year






**MEDICAL
TREATMENT**

Medical Treatment DOUGLAS
LAW FIRM

- Worker's Comp carrier chooses
- One time change of medical provider
- Chiropractor—Limits





Claim Administration DOUGLAS
— LAW FIRM —

- No Juries; Administrative Law Judge
- Most cases will settle
- Can't fire an employee for filing a claim; but can ask the employee to resign as a condition of the settlement

Injured Workers Duties DOUGLAS
— LAW FIRM —

- Report injury to employer within 30 days of injury or doctor diagnosis
- See a doctor authorized by employer – not worker's personal doctor
- Contact employer and insurance company on doctor's diagnosis and ability to return to work

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Benefits Available to Injured Worker DOUGLAS
LAW FIRM

INDEMNITY BENEFITS
If worker cannot work for more than 7 days

TEMPORARY TOTAL DISABILITY
If worker cannot work at all

TEMPORARY PARTIAL BENEFITS
If worker can return to work but cannot earn the same wages as before injury

IMPAIRMENT BENEFITS
If worker retains permanent work restrictions after reaching maximum medical improvement



Exemptions DOUGLAS
LAW FIRM

- An employee can choose to be exempt from workers' comp if they meet the eligibility requirements and obtain an exemption pursuant to Fla. Stat. 440.05
- Once exempt, they cannot receive benefits if injured on the job

Admin Duties DOUGLAS
LAW FIRM



EMPLOYER
DUTIES



HEALTHCARE
PROVIDER DUTIES




INSURANCE
PROVIDER DUTIES

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Employer Duties DOUGLAS
LAW FIRM

- Contact insurance company within 7 days of injured worker reporting injury
- Obtain doctor's list of restrictions and discuss changes in pay with worker
- Contact insurance within 14 days about employee's restrictions and changes in pay once determined




Healthcare Provider Duties DOUGLAS
LAW FIRM

- Obtain authorization from insurer before providing treatment on injured worker (unless an emergency)
- Only provide treatment that has been authorized or is medically necessary
- Identify work limitations and restrictions for the injured worker
- Cooperate in disputes about medical bill reimbursements




Insurance Provider Duties DOUGLAS
LAW FIRM


- Adjust claims without coercion
- Send informational brochure to injured worker within 3 days of knowledge of injury
- Respond to requests for medical treatment by authorized doctor within 3 days
- If denying claim – deny within 14 days of notice of injury
- Timely initiate benefits to the injured worker






Recent Changes to Workers' Comp Laws 

1. Two Workers' Comp cases from 2016 have changed the law and still control
2. Limitation on Attorney's fees was found unconstitutional
3. Limitation on Temporary Total disability benefits were found unconstitutional




Case Law 

Castellanos v. Next Door Co.,
192 So. 3d 431 (Fla. 2016)

ISSUE for the Florida Supreme Court:
Whether the statutory fee schedule for awarding attorney's fees to the claimant in a WC case is unconstitutional as a denial of due process under the Florida and United States Constitutions.

Case Law DOUGLAS
LAW FIRM


Castellanos v. Next Door Co.,
192 So. 3d 431 (Fla. 2016)

 **FACTS OF CASE**

- Experts testified case was extremely complex (over 107 hours expended)
- Injured worker received a little over \$800.00
- Application of conclusive fee schedule yielded a \$164.54 fee award (Approx. \$1.50/hr.)

Case Law DOUGLAS
LAW FIRM


Castellanos v. Next Door Co.,
192 So. 3d 431 (Fla. 2016)

 **FINDINGS OF CASE**

Supreme Court noted that in some cases the fee award may be “inadequate” considering the complexity while in other cases a large recovery may be “excessive.”

Case Law DOUGLAS
LAW FIRM

Castellanos v. Next Door Co.,
192 So. 3d 431 (Fla. 2016)

 **RULING**

The irrebuttable presumption in the statutory fee schedule violated due process. Therefore, the prior Statute allowing courts to look into reasonableness of fees was reinstated.

Case Law DOUGLAS
LAW FIRM

Westphal v. City of St. Petersburg,
194 So. 3d 311 (Fla. 2016)

ISSUE:
Whether section 440.15(2)(a) Fla. Stat. (2009) which cuts off disability benefits after **104 weeks** for **temporary, totally disabled** workers incapable of working, but who have not yet reached maximum medical improvement violated the constitution?

Case Law DOUGLAS
LAW FIRM

Westphal v. City of St. Petersburg,
194 So. 3d 311 (Fla. 2016)

COURT'S CONCERNS
Gap created by law "deprives a severely injured worker of disability benefits at a critical time, when the worker cannot return to work and is totally disabled, but the worker's doctors — chosen by the employer — determine that the worker has not reached maximum medical improvement."

Case Law DOUGLAS
LAW FIRM

Westphal v. City of St. Petersburg,
194 So. 3d 311 (Fla. 2016)

HOLDING
Section of the Law violated Article I, Section 21 of the Florida Constitution: *Rights relating to access to courts*

Case Law DOUGLAS
LAW FIRM

Westphal v. City of St. Petersburg,
194 So. 3d 311 (Fla. 2016)

REMEDY
Florida Supreme Court revived the prior statute [440.15(2)(A) (1994)] which effectively increased the limitation on payouts to temporary, totally disabled workers to 260 weeks (5 years).

**COURTS
REVERSED
AGAIN**

Case Law DOUGLAS
LAW FIRM

Westphal v. City of St. Petersburg,
194 So. 3d 311 (Fla. 2016)

IMPACT
The immediate impact was slow downs in pay outs and higher presumed costs for insurance companies which were passed the onto the consumer (insured).

**COURTS
REVERSED
AGAIN**

Case Law DOUGLAS
LAW FIRM

Westphal v. City of St. Petersburg,
194 So. 3d 311 (Fla. 2016)

REACTIONS
“ [We] are disappointed in today's decision as it could significantly hurt the Florida business community. ”
(Property Casualty Insurers Association of America)

“ [The] decision is just one more blow from the Supreme Court that poses a very real threat to small business owners' ability to employ Floridians ... It will almost certainly cause workers' compensation costs to increase. ”
(National Federation of Independent Business/Florida)

What Does This Mean For Businesses? DOUGLAS
LAW FIRM

- Attorney's fees awards may well exceed recovery in certain cases
- Higher costs for insurance companies
- Passes the costs to the consumer (insured)

Initial Rate Increases DOUGLAS
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The Office of Insurance Regulation (OIR) approved Florida's Worker's compensation Insurance rates to increase **14.5%** for 2017.

Insurance companies originally sought a 19.6% increase

14.5%
RATE INCREASE

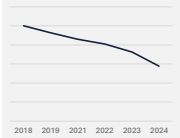
Initial Rate Increases DOUGLAS
LAW FIRM

- **10.1%** avg. statewide rate increase from the attorney's fees ruling in Castellanos
- **2.2%** avg. statewide increase from ruling in Westphal
- **1.8%** avg. statewide increase from updates within the Florida worker's compensation HCPR Manual.

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Rates Have Been Coming Down DOUGLAS
LAW FIRM

- November 6, 2019, the rates were reduced to **7.5%**
- On Jan. 1, 2021, the order by Florida Insurance Commissioner David Altmaier approving the statewide average reduction of **6.6%** in workers' compensation rates will take effect.
- On Jan. 1, 2022, rates fell another **4.9%**
- January 1 2023, rates fell another **8.4%**
- January 1 2024, rates fell another **15.1%**



Year	Rate
2018	14.1%
2019	7.5%
2021	0.9%
2022	-4.0%
2023	-12.4%
2024	-27.5%

Recent Change To FL Workers' Comp Law DOUGLAS
LAW FIRM

- Workers Comp For Students in Apprenticeship Programs – Fla. Stat. 446.54:
Mandated that students 18 years of age or younger who are in a paid pre-apprenticeship or apprenticeship program be covered by the workers comp insurance of their employer;




Recent Change To FL Workers' Comp Law DOUGLAS
LAW FIRM

- Maximum Workers' Compensation Rate - Effective January 1, 2024
The Florida Department of Economic Opportunity has determined the statewide average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law to be **\$1,259.76**.

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Recent Change To FL Workers' Comp Law DOUGLAS
LAW FIRM


- Students 18 years or younger who are in an unpaid pre-apprenticeship or apprenticeship program be covered by the workers comp insurance of the School District or Florida College System institution providing the program.
- The Department of Education may then reimburse all employers for the cost of workers' comp premiums for students in these programs




Recent Developments in the Appellate Courts DOUGLAS
LAW FIRM

Jones v. Grace Healthcare,
320 So. 3d 191, 194 (Fla. 1st DCA 2021)


 **FACTS**
Appellant challenged the denial of his petition for benefits for a referral for medical marijuana.


 **ISSUE**
Whether medical marijuana is reimbursable under workers' comp.


 **RULING**
Medical marijuana is not reimbursable under workers' comp, therefore, an employer does not have to pay for an employee's healthcare evaluation for medicinal marijuana treatment.

Recent Developments in the Appellate Courts DOUGLAS
LAW FIRM


Doss v. United Parcel Services/Liberty Mut.,
331, So. 3d 216 (Fla. 1st DCA 2021)

 **FACTS**
Appellant, a UPS employee, injured in 1997. Then underwent knee surgery in 2016 for the injury and sought temporary total disability benefits. Insurer denied benefits due to the 104 week limitation.


 **ISSUE**
Whether the 104 week limit on temporary total disability benefits is constitutional.


 **RULING**
Yes, the 104 week limit is constitutional. Temporary total disability benefits expire 104 weeks after injury.


Workers' Compensation – Charlie Douglas

Recent Developments in the Appellate Courts 


Jones v. State,
324 So. 3d 44 (Fla. 1st DCA 2021).


 **FACTS**
Appellant correctional officer suffered psychiatric injuries after being attacked by an inmate. JCC denied her claim for temporary benefits because it was for a period lasting more than six months.

 **ISSUE**
Whether the statutory cap of six months (Fla. Stat. 440.092(3)) for temporary benefits applies to a claimant that is not receiving impairment benefits for a physical injury.


Recent Developments in the Appellate Courts 


Jones v. State,
324 So. 3d 44 (Fla. 1st DCA 2021).

 **RULING**
Fla. Stat. 440.092(3) does not apply to a claimant that is not receiving impairment benefits for a physical injury. Claimant in this case entitled to more than six months temporary benefits because they suffered a psychiatric injury and did not receive impairment benefits.

Recent Developments in the Appellate Courts 

Kelly Air Systems, LLC v. Kohlun,
2022 Fla. App. LEXIS 1812 (Fla. 1st DCA 2022)


 **FACTS**
Appellant, while driving the employer provided car, suffered injuries in a car crash after clocking out of work for the day.

 **ISSUE**
Whether workers' comp compensates an injury sustained while the employee is leaving work in an employee provided car.

Workers' Compensation – Charlie Douglas

Recent Developments in the Appellate Courts DOUGLAS
LAW FIRM

Kelly Air Systems, LLC v. Kohlun,
2022 Fla. App. LEXIS 1812 (Fla. 1st DCA 2022)

 **RULING**
The going-and-coming and the traveling employee provisions of Fla. Stat. 440.092 excludes the compensability of injuries sustained while the employee is traveling to and from work when the employee is not compensated by the employer for that traveling.

Recent Developments in the Appellate Courts DOUGLAS
LAW FIRM


Electric Boat Corp. v. Sylvia Fallen,
(Fla. 5th DCA 2022)


 **FACTS**
Plaintiff subcontractor employee injured at worksite after defendant subcontractor's employees moved stairs outside plaintiff's mobile office in order to complete work, but failed to return them, causing plaintiff to fall once she exited the office.

 **ISSUE**
Whether plaintiff made a prima facie showing of defendant's gross negligence in order to defeat defendant's affirmative defense of horizontal workers comp immunity.


Recent Developments in the Appellate Courts DOUGLAS
LAW FIRM


Electric Boat Corp. v. Sylvia Fallen,
(Fla. 5th DCA 2022)


 **RULING**
Plaintiff did not make a prima facie showing of defendant's gross negligence because defendant did not evince a conscious disregard of the consequences when it failed to return the stairs since the defendant employees intended to return the stairs once they finished the work, but simply forgot to do so.

Recent Developments in the Appellate Courts 

Williams v. Brevard County Fire Rescue,
(Fla. 1st DCA 12/28/22)

 **FACTS**
Claimant was first responder who sought damages for PTSD.


 **RULING**
Judge Denied Claim based on Compulsory medical exam physician that the accident did not give rise to mental injury. DCA Affirmed.

PTSD For First Responders 

Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience

For PTSD, the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:

1. Decapitation (full or partial),
2. Degloving,
3. Enucleation,
4. Evisceration,


PTSD For First Responders 

(Continued) For PTSD, the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:

5. Exposure of one or more of the following internal organs: a. Brain, b. Heart, c. Intestines, d. Kidneys, e. Liver, or f. Lungs	6. Impalement, 7. Severance (full or partial), and 8. Third degree burn on 9% or more of the body.
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Other Rule Changes DOUGLAS
LAW FIRM

- CFO Directive 2021-04 – mandated that as of June 27, 2021, the Injured Worker Informational Brochure must be mailed to the injured worker as opposed to delivered via other means
- Pursuant to Fla. Stat. 440.185(3), and 69L-3.0035, Florida Administrative code






**WEATHERING
THE RATE
ROLLERCOASTER**

Weathering the Rate Rollercoaster DOUGLAS
LAW FIRM

THE WALL STREET JOURNAL



America Is Trying to Electrify. There Aren't Enough Electricians.

Climate law is expected to add new demand for car chargers and heat pumps


Reducing Costs DOUGLAS
LAW FIRM

- Make Safety a Priority
 - Written Safety Control Program
 - Carrots and Sticks
 - Provide Protective Equipment
 - Inspect Work Equipment




Reducing Costs DOUGLAS
LAW FIRM

- Take Action When a Claim Occurs
 - Complete an Accident Report
 - Document and Photograph
 - Identify Witnesses




Reducing Costs DOUGLAS
LAW FIRM

- Background Checks
 - Criminal
 - Motor Vehicle Record
 - Verify Education, Licensing, Credentials



Reducing Costs DOUGLAS
LAW FIRM

- Require Drug Free Workplace
- Pre-Employment Screening
- Random Testing
- Post-Accident



**THIS IS A
DRUG-FREE
WORK-PLACE**

Tenure and Risk DOUGLAS
LAW FIRM

- ↑ Tenure less than 1 year is single most significant Predictor (2-4 times Loss Costs)
- ↓ 2+ years have relatively low claims
- ⚠ Severity Higher In Older Workers

Insurance Carrier DOUGLAS
LAW FIRM

- Selecting your Agent and Competition
- Understanding Coverages and Exclusions
- Becoming Your Own Carrier (Captive Insurance Agency)

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