

**2022 Florida Statutes  
Title XXXI - Labor**

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**CHAPTER 440  
WORKERS' COMPENSATION (excerpts)**

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**440.01 Short title.**—This chapter may be cited as the “Workers’ Compensation Law.”

**History.**—s. 1, ch. 17481, 1935; CGL 1936 Supp. 5966(1); s. 23, ch. 78-300; ss. 1, 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1.

**440.015 Legislative intent.**—It is the intent of the Legislature that the Workers’ Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker’s return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the Legislature that workers’ compensation cases shall be decided on their merits. The workers’ compensation system in Florida is based on a mutual renunciation of common-law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers’ compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers’ compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers’ compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is

not an economic or administrative burden. The department, agency, the Office of Insurance Regulation, and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

*History.—s. 8, ch. 90-201; s. 6, ch. 91-1; s. 1, ch. 93-415; s. 10, ch. 2002-194; s. 466, ch. 2003-261; s. 3, ch. 2012-135.*

**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.

(2) “Adoption” or “adopted” means legal adoption prior to the time of the injury.

(3) “Agency” means the Agency for Health Care Administration.

(4) “Carrier” means any person or fund authorized under s. 440.38 to insure under this chapter and includes a self-insurer, and a commercial self-insurance fund authorized under s. 624.462.

(5) “Casual” as used in this section refers only to employments for work that is anticipated to be completed in 10 working days or less, without regard to the number of persons employed, and at a total labor cost of less than \$500.

(6) “Child” includes a posthumous child, a child legally adopted prior to the injury of the employee, and a stepchild or acknowledged child born out of wedlock dependent upon the deceased, but does not include married children unless wholly dependent on the employee. “Grandchild” means a child as above defined of a child as above defined. “Brother” and “sister” include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers or married sisters unless wholly dependent on the employee. “Child,” “grandchild,” “brother,” and “sister” include only persons who at the time of the death of the deceased employees are

under 18 years of age, or under 22 years of age if a full-time student in an accredited educational institution.

(7) “Compensation” means the money allowance payable to an employee or to his or her dependents as provided for in this chapter.

(8) “Construction industry” means for-profit activities involving any building, clearing, filling, excavation, or substantial improvement in the size or use of any structure or the appearance of any land. However, “construction” does not mean a homeowner’s act of construction or the result of a construction upon his or her own premises, provided such premises are not intended to be sold, resold, or leased by the owner within 1 year after the commencement of construction. The division may, by rule, establish codes and definitions thereof that meet the criteria of the term “construction industry” as set forth in this section.

(9) “Corporate officer” or “officer of a corporation” means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as authorized or required under part I of chapter 607. The term “officer of a corporation” includes a member owning at least 10 percent of a limited liability company as defined in and organized pursuant to chapter 605.

(10) “Date of maximum medical improvement” means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.

(11) “Death” as a basis for a right to compensation means only death resulting from an injury.

(12) “Department” means the Department of Financial Services; the term does not include the Financial Services Commission or any office of the commission.

(13) “Disability” means incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury.

(14) “Division” means the Division of Workers’ Compensation of the Department of Financial Services.

(15) (a) “Employee” means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

(b) “Employee” includes any person who is an officer of a corporation and who performs services for remuneration for such corporation within this state, whether or not such services are continuous.

1. Any officer of a corporation may elect to be exempt from this chapter by filing notice of the election with the department as provided in s. 440.05.

2. As to officers of a corporation who are engaged in the construction industry, no more than three officers of a corporation or of any group of affiliated corporations may elect to be exempt from this chapter by filing a notice of the election with the department as provided in s. 440.05. Officers must be shareholders, each owning at least 10 percent of the stock of such corporation and listed as an officer of such corporation with the Division of Corporations of the Department of State, in order to elect exemptions under this chapter. For purposes of this subparagraph, the term “affiliated” means and includes one or more corporations or entities, any one of which is a corporation engaged in the construction industry, under the same or substantially the same control of a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term “affiliated” includes, but is not limited to, the officers, directors, executives, shareholders active in management, employees, and agents of the affiliated corporation. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business is affiliated with the other.

3. An officer of a corporation who elects to be exempt from this chapter by filing a notice of the election with the department as provided in s. 440.05 is not an employee. Services are presumed to have been rendered to the corporation if the officer is compensated by other than dividends upon shares of stock of the corporation which the officer owns.

(c) “Employee” includes:

1. A sole proprietor or a partner who is not engaged in the construction industry, devotes full time to the proprietorship or partnership, and elects to be included in the definition of employee by filing notice thereof as provided in s. 440.05.

2. All persons who are being paid by a construction contractor as a subcontractor, unless the subcontractor has validly elected an exemption as permitted by this chapter, or has otherwise secured the payment of compensation coverage as a subcontractor, consistent with s. 440.10, for work performed by or as a subcontractor.

3. An independent contractor working or performing services in the construction industry.

4. A sole proprietor who engages in the construction industry and a partner or partnership that is engaged in the construction industry.

(d) “Employee” does not include:

1. An independent contractor who is not engaged in the construction industry.  
a. In order to meet the definition of independent contractor, at least four of the following criteria must be met:

(I) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;

(II) The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;

(III) The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;

(IV) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;

(V) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or

(VI) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

b. If four of the criteria listed in sub-subparagraph a. do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:

(I) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.

(II) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.

(III) The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.

(IV) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.

(V) The independent contractor may realize a profit or suffer a loss in connection with performing work or services.

(VI) The independent contractor has continuing or recurring business liabilities or obligations.

(VII) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

c. Notwithstanding anything to the contrary in this subparagraph, an individual claiming to be an independent contractor has the burden of proving that he or she is an independent contractor for purposes of this chapter.

2. A real estate licensee, if that person agrees, in writing, to perform for remuneration solely by way of commission.

3. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, if a written contract evidencing an independent contractor relationship is entered into before the commencement of such entertainment.

4. An owner-operator of a motor vehicle who transports property under a written contract with a motor carrier which evidences a relationship by which the owner-operator assumes the responsibility of an employer for the performance of the contract, if the owner-operator is required to furnish motor vehicle equipment as identified in the written contract and the principal costs incidental to the performance of the contract,

including, but not limited to, fuel and repairs, provided a motor carrier's advance of costs to the owner-operator when a written contract evidences the owner-operator's obligation to reimburse such advance shall be treated as the owner-operator furnishing such cost and the owner-operator is not paid by the hour or on some other time-measured basis.

5. A person whose employment is both casual and not in the course of the trade, business, profession, or occupation of the employer.

6. A volunteer, except a volunteer worker for the state or a county, municipality, or other governmental entity. A person who does not receive monetary remuneration for services is presumed to be a volunteer unless there is substantial evidence that a valuable consideration was intended by both employer and employee. For purposes of this chapter, the term "volunteer" includes, but is not limited to:

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, if such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department; and

b. Volunteers participating in federal programs established under Pub. L. No. 93-113.

7. Unless otherwise prohibited by this chapter, any officer of a corporation who elects to be exempt from this chapter. Such officer is not an employee for any reason under this chapter until the notice of revocation of election filed pursuant to s. 440.05 is effective.

8. An officer of a corporation that is engaged in the construction industry who elects to be exempt from the provisions of this chapter, as otherwise permitted by this chapter. Such officer is not an employee for any reason until the notice of revocation of election filed pursuant to s. 440.05 is effective.

9. An exercise rider who does not work for a single horse farm or breeder, and who is compensated for riding on a case-by-case basis, provided a written contract is entered into prior to the commencement of such activity which evidences that an employee/employer relationship does not exist.

10. A taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues.

11. A person who performs services as a sports official for an entity sponsoring an interscholastic sports event or for a public entity or private, nonprofit organization that sponsors an amateur sports event. For purposes of this subparagraph, such a person is an independent contractor. For purposes of this subparagraph, the term "sports official" means any person who is a neutral participant in a sports event, including, but not limited to, umpires, referees, judges, linespersons, scorekeepers, or timekeepers. This subparagraph does not apply to any person employed by a district school board who serves as a sports official as required by the employing school board or who serves as a sports official as part of his or her responsibilities during normal school hours.

12. Medicaid-enrolled clients under chapter 393 who are excluded from the definition of employment under s. 443.1216(4)(d) and served by Adult Day Training Services under the Home and Community-Based or the Family and Supported Living Medicaid Waiver program in a sheltered workshop setting licensed by the United States Department of Labor for the purpose of training and earning less than the federal hourly minimum wage.

13. Medicaid-enrolled clients under chapter 393 who are excluded from the definition of employment under s. 443.1216(4)(d) and served by Adult Day Training Services under the Family and Supported Living Medicaid Waiver program in a sheltered workshop setting licensed by the United States Department of Labor for the purpose of training and earning less than the federal hourly minimum wage.

(16) (a) “Employer” means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. The term also includes employee leasing companies, as defined in s. 468.520(5), and employment agencies that provide their own employees to other persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107.

(b) A homeowner shall not be considered the employer of persons hired by the homeowner to carry out construction on the homeowner’s own premises if those premises are not intended for immediate lease, sale, or resale.

(c) Facilities serving individuals under subparagraph (15)(d)12. shall be considered agents of the Agency for Health Care Administration as it relates to providing Adult Day Training Services under the Home and Community-Based Medicaid Waiver program and not employers or third parties for the purpose of limiting or denying Medicaid benefits.

(17) (a) “Employment,” subject to the other provisions of this chapter, means any service performed by an employee for the person employing him or her.

(b) “Employment” includes:

1. Employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein, including officers elected at the polls.

2. All private employments in which four or more employees are employed by the same employer or, with respect to the construction industry, all private employment in which one or more employees are employed by the same employer.

3. Volunteer firefighters responding to or assisting with fire or medical emergencies whether or not the firefighters are on duty.

(c) “Employment” does not include service performed by or as:

1. Domestic servants in private homes.

2. Agricultural labor performed on a farm in the employ of a bona fide farmer, or association of farmers, that employs 5 or fewer regular employees and that employs fewer than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, provided such seasonal employment does not exceed 45

days in the same calendar year. The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, fish, and truck farms, ranches, nurseries, and orchards. The term “agricultural labor” includes field foremen, timekeepers, checkers, and other farm labor supervisory personnel.

3. Professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players, and motorsports teams competing in a motor racing event as defined in s. 549.08.

4. Labor under a sentence of a court to perform community services as provided in s. 316.193.

5. State prisoners or county inmates, except those performing services for private employers or those enumerated in s. 948.036(1).

(18) “Misconduct” includes, but is not limited to, the following, which shall not be construed in pari materia with each other:

(a) Conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of the employee; or

(b) Carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of an employer’s interests or of the employee’s duties and obligations to the employer.

(19) “Injury” means personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. Damage to dentures, eyeglasses, prosthetic devices, and artificial limbs may be included in this definition only when the damage is shown to be part of, or in conjunction with, an accident. This damage must specifically occur as the result of an accident in the normal course of employment.

(20) “Parent” includes stepparents and parents by adoption, parents-in-law, and any persons who for more than 3 years prior to the death of the deceased employee stood in the place of a parent to him or her and were dependent on the injured employee.

(21) “Partner” means any person who is a member of a partnership that is formed by two or more persons to carry on as co-owners of a business with the understanding that there will be a proportional sharing of the profits and losses between them. For the purposes of this chapter, a partner is a person who participates fully in the management of the partnership and who is personally liable for its debts.

(22) “Permanent impairment” means any anatomic or functional abnormality or loss determined as a percentage of the body as a whole, existing after the date of maximum medical improvement, which results from the injury.

(23) “Person” means individual, partnership, association, or corporation, including any public service corporation.



(24) “Self-insurer” means:

- (a) Any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) or (6) as an individual self-insurer;
- (b) Any employer who has secured payment of compensation through a group self-insurance fund under s. 624.4621;
- (c) Any group self-insurance fund established under s. 624.4621;
- (d) A public utility as defined in s. 364.02 or s. 366.02 that has assumed by contract the liabilities of contractors or subcontractors pursuant to s. 624.46225; or
- (e) Any local government self-insurance fund established under s. 624.4622.

(25) “Sole proprietor” means a natural person who owns a form of business in which that person owns all the assets of the business and is solely liable for all the debts of the business.

(26) “Spouse” includes only a spouse substantially dependent for financial support upon the decedent and living with the decedent at the time of the decedent’s injury and death, or substantially dependent upon the decedent for financial support and living apart at that time for justifiable cause.

(27) “Time of injury” means the time of the occurrence of the accident resulting in the injury.

(28) “Wages” means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury and includes only the wages earned and reported for federal income tax purposes on the job where the employee is injured and any other concurrent employment where he or she is also subject to workers’ compensation coverage and benefits, together with the reasonable value of housing furnished to the employee by the employer which is the permanent year-round residence of the employee, and gratuities to the extent reported to the employer in writing as taxable income received in the course of employment from others than the employer and employer contributions for health insurance for the employee or the employee’s dependents. However, housing furnished to migrant workers shall be included in wages unless provided after the time of injury. In employment in which an employee receives consideration for housing, the reasonable value of such housing compensation shall be the actual cost to the employer or based upon the Fair Market Rent Survey promulgated pursuant to s. 8 of the Housing and Urban Development Act of 1974, whichever is less. However, if employer contributions for housing or health insurance are continued after the time of the injury, the contributions are not “wages” for the purpose of calculating an employee’s average weekly wage.

(29) “Weekly compensation rate” means and refers to the amount of compensation payable for a period of 7 consecutive calendar days, including any Saturdays, Sundays, holidays, and other nonworking days which fall within such period of 7 consecutive calendar days. When Saturdays, Sundays, holidays, or other nonworking days immediately follow the first 7 calendar days of disability or occur at the end of a period of disability as

the last day or days of such period, such nonworking days constitute a part of the period of disability with respect to which compensation is payable.

(30) “Construction design professional” means an architect, professional engineer, landscape architect, or surveyor and mapper, or any corporation, professional or general, that has a certificate to practice in the construction design field from the Department of Business and Professional Regulation.

(31) “Individual self-insurer” means any employer who has secured payment of compensation pursuant to s. 440.38(1)(b) as an individual self-insurer.

(32) “Domestic individual self-insurer” means an individual self-insurer:

- (a) Which is a corporation formed under the laws of this state;
- (b) Who is an individual who is a resident of this state or whose primary place of business is located in this state; or
- (c) Which is a partnership whose principals are residents of this state or whose primary place of business is located in this state.

(33) “Foreign individual self-insurer” means an individual self-insurer:

- (a) Which is a corporation formed under the laws of any state, district, territory, or commonwealth of the United States other than this state;
- (b) Who is an individual who is not a resident of this state and whose primary place of business is not located in this state; or
- (c) Which is a partnership whose principals are not residents of this state and whose primary place of business is not located in this state.

(34) “Insolvent member” means an individual self-insurer which is a member of the Florida Self-Insurers Guaranty Association, Incorporated, or which was a member and has withdrawn pursuant to s. 440.385(1)(b), and which has been found insolvent, as defined in subparagraph (35)(a)1., subparagraph (35)(a)2., or subparagraph (35)(a)3., by a court of competent jurisdiction in this or any other state, or meets the definition of subparagraph (35)(a)4.

(35) “Insolvency” or “insolvent” means:

- (a) With respect to an individual self-insurer:
  - 1. That all assets of the individual self-insurer, if made immediately available, would not be sufficient to meet all the individual self-insurer’s liabilities;
  - 2. That the individual self-insurer is unable to pay its debts as they become due in the usual course of business;
  - 3. That the individual self-insurer has substantially ceased or suspended the payment of compensation to its employees as required in this chapter; or
  - 4. That the individual self-insurer has sought protection under the United States Bankruptcy Code or has been brought under the jurisdiction of a court of bankruptcy as a debtor pursuant to the United States Bankruptcy Code.
- (b) With respect to an employee claiming insolvency pursuant to s. 440.25(5), a person is insolvent who:

1. Has ceased to pay his or her debts in the ordinary course of business and cannot pay his or her debts as they become due; or
2. Has been adjudicated insolvent pursuant to the federal bankruptcy law.

(36) “Arising out of” pertains to occupational causation. An accidental injury or death arises out of employment if work performed in the course and scope of employment is the major contributing cause of the injury or death.

(37) “Soft-tissue injury” means an injury that produces damage to the soft tissues, rather than to the skeletal tissues or soft organs.

(38) “Insurer” means a group self-insurers’ fund authorized by s. 624.4621, an individual self-insurer authorized by s. 440.38, a commercial self-insurance fund authorized by s. 624.462, an assessable mutual insurer authorized by s. 628.6011, and an insurer licensed to write workers’ compensation and employer’s liability insurance in this state. The term “carrier,” as used in this chapter, means an insurer as defined in this subsection.

(39) “Statement,” for the purposes of ss. 440.105 and 440.106, shall include the exact fraud statement language in s. 440.105(7). This requirement includes, but is not limited to, any notice, representation, statement, proof of injury, bill for services, diagnosis, prescription, hospital or doctor record, X ray, test result, or other evidence of loss, injury, or expense.

(40) “Specificity” means information on the petition for benefits sufficient to put the employer or carrier on notice of the exact statutory classification and outstanding time period of benefits being requested and includes a detailed explanation of any benefits received that should be increased, decreased, changed, or otherwise modified. If the petition is for medical benefits, the information shall include specific details as to why such benefits are being requested, why such benefits are medically necessary, and why current treatment, if any, is not sufficient. Any petition requesting alternate or other medical care, including, but not limited to, petitions requesting psychiatric or psychological treatment, must specifically identify the physician, as defined in s. 440.13(1), who is recommending such treatment. A copy of a report from such physician making the recommendation for alternate or other medical care shall also be attached to the petition. A judge of compensation claims shall not order such treatment if a physician is not recommending such treatment.

(41) “Office of Insurance Regulation” means the Office of Insurance Regulation of the Financial Services Commission.

*History.*—s. 2, ch. 17481, 1935; s. 1, ch. 17482, 1935; s. 1, ch. 17483, 1935; CGL 1936 Supp. 5966(2); s. 1, ch. 18413, 1937; s. 1, ch. 20672, 1941; s. 1, ch. 28238, 1953; s. 1, ch. 29778, 1955; s. 1, ch. 57-155; s. 1, ch. 57-225; s. 1, ch. 59-100; s. 1, ch. 65-184; s. 1, ch. 67-554; ss. 17, 35, ch. 69-106; s. 1, ch. 71-80; s. 162, ch. 71-377; s. 1, ch. 72-243; s. 1, ch. 73-127; s. 1, ch. 73-283; s. 116, ch. 73-333; s. 1, ch. 74-46; s. 1, ch. 74-124; s. 1, ch. 74-197; s. 1, ch. 75-209; s. 1, ch. 77-174; s. 1, ch. 77-290; ss. 1, 23, ch. 78-300; s. 15, ch. 79-7; ss. 2, 124, ch. 79-40; s. 21, ch. 79-312; s. 1, ch. 80-236; s. 3, ch. 81-119; ss. 1, 20, ch. 83-305; s. 1, ch. 84-267; s. 6, ch. 86-171; s. 1,

ch. 87-330; s. 1, ch. 88-203; s. 2, ch. 89-61; ss. 3, 43, ch. 89-289; ss. 9, 56, ch. 90-201; ss. 7, 52, ch. 91-1; s. 1, ch. 91-2; s. 2, ch. 93-415; s. 117, ch. 94-119; s. 59, ch. 94-218; s. 97, ch. 97-103; s. 1, ch. 98-174; s. 89, ch. 2000-153; s. 7, ch. 2001-91; s. 11, ch. 2002-194; s. 5, ch. 2002-236; s. 54, ch. 2003-164; s. 467, ch. 2003-261; ss. 1, 2, ch. 2003-412; s. 2, ch. 2003-422; s. 59, ch. 2004-5; s. 32, ch. 2004-373; s. 21, ch. 2005-60; s. 12, ch. 2005-71; s. 1, ch. 2005-78; s. 4, ch. 2006-15; ss. 1, 2, ch. 2012-213; s. 1, ch. 2013-141; s. 46, ch. 2014-209; s. 19, ch. 2015-148; s. 11, ch. 2022-138.

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**440.03 Application.**—Every employer and employee as defined in s. 440.02 shall be bound by the provisions of this chapter.

*History.*—s. 3, ch. 17481, 1935; CGL 1936 Supp. 5966(3); s. 1, ch. 70-148; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1.

**440.04 Waiver of exemption.**—

(1) Every employer having in her or his employment any employee not included in the definition “employee” or excluded or exempted from the operation of this chapter may at any time waive such exclusion or exemption and accept the provisions of this chapter by giving notice thereof as provided in s. 440.05, and by so doing be as fully protected and covered by the provisions of this chapter as if such exclusion or exemption had not been contained herein.

(2) When any policy or contract of insurance specifically secures the benefits of this chapter to any person not included in the definition of “employee” or whose services are not included in the definition of “employment” or who is otherwise excluded or exempted from the operation of this chapter, the acceptance of such policy or contract of insurance by the insured and the writing of same by the carrier shall constitute a waiver of such exclusion or exemption and an acceptance of the provisions of this chapter with respect to such person, notwithstanding the provision of s. 440.05 with respect to notice.

(3) A corporate officer who has exempted herself or himself by proper notice from the operation of this chapter may at any time revoke such exemption and thereby accept the provisions of this chapter by giving notice as provided in s. 440.05.

*History.*—s. 4, ch. 17481, 1935; CGL 1936 Supp. 5966(4); s. 2, ch. 18413, 1937; s. 2, ch. 29778, 1955; s. 4, ch. 70-148; s. 2, ch. 74-197; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1; s. 98, ch. 97-103.

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**440.06 Failure to secure compensation; effect.**—Every employer who fails to secure the payment of compensation, as provided in s. 440.10, by failing to meet the requirements of s. 440.38 may not, in any suit brought against him or her by an employee subject to this chapter to recover damages for injury or death, defend such a suit on the grounds that the injury was caused by the negligence of a fellow servant, that the employee assumed the risk of his or her employment, or that the injury was due to the comparative negligence of the employee.

*History.*—s. 6, ch. 17481, 1935; CGL 1936 Supp. 5966(6); s. 5, ch. 70-148; s. 23, ch. 78-300; ss. 4, 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1; s. 100, ch. 97-103; s. 4, ch. 2003-412.

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**440.091 Law enforcement officer, firefighter, emergency medical technician, or paramedic; when acting within the course of employment.—**

(1) If an employee:

(a) Is elected, appointed, or employed full time by a municipality, the state, or any political subdivision and is vested with authority to bear arms and make arrests and the employee's primary responsibility is the prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state;

(b) Was discharging that primary responsibility within the state in a place and under circumstances reasonably consistent with that primary responsibility; and

(c) Was not engaged in services for which he or she was paid by a private employer, and the employee and his or her public employer had no agreement providing for workers' compensation coverage for that private employment;

the employee is considered to have been acting within the course of employment. The term "employee" as used in this subsection includes all certified supervisory and command personnel whose duties include, in whole or in part, responsibilities for the supervision, training, guidance, and management of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

(2) If a firefighter as defined by s. 112.191(1)(b) is engaged in extinguishing a fire, or protecting and saving life or property due to a fire in this state in an emergency, and such activities would be considered to be within the course of his or her employment as a firefighter and covered by the employer's workers' compensation coverage except for the fact that the firefighter was off duty or that the location of the fire was outside the employer's jurisdiction or area of responsibility, such activities are considered to be within the course of employment. This subsection does not apply if the firefighter is performing activities for which he or she is paid by another employer or contractor.

(3) If an emergency medical technician or paramedic is appointed or employed full time by a municipality, the state, or any political subdivision, is certified under chapter 401, is providing basic life support or advanced life support services, as defined in s. 401.23, in an emergency situation in this state, and such activities would be considered to be within the course of his or her employment as an emergency medical technician or paramedic and covered by the employer's workers' compensation coverage except for the fact that the location of the emergency was outside of the employer's jurisdiction or area of responsibility, such activities are considered to be within the course of employment. The provisions of this subsection do not apply if the emergency medical technician or paramedic is performing activities for which he or she is paid by another employer or contractor.

*History.—s. 1, ch. 82-146; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1; s. 102, ch. 97-103; s. 1, ch. 2002-236.*

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**440.10 Liability for compensation.—**

(1) (a) Every employer coming within the provisions of this chapter shall be liable for, and shall secure, the payment to his or her employees, or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. Any contractor or subcontractor who engages in any public or private construction in the state shall secure and maintain compensation for his or her employees under this chapter as provided in s. 440.38.

(b) In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

(c) A contractor shall require a subcontractor to provide evidence of workers' compensation insurance. A subcontractor who is a corporation and has an officer who elects to be exempt as permitted under this chapter shall provide a copy of his or her certificate of exemption to the contractor.

(d) 1. If a contractor becomes liable for the payment of compensation to the employees of a subcontractor who has failed to secure such payment in violation of s. 440.38, the contractor or other third-party payor shall be entitled to recover from the subcontractor all benefits paid or payable plus interest unless the contractor and subcontractor have agreed in writing that the contractor will provide coverage.

2. If a contractor or third-party payor becomes liable for the payment of compensation to the corporate officer of a subcontractor who is engaged in the construction industry and has elected to be exempt from the provisions of this chapter, but whose election is invalid, the contractor or third-party payor may recover from the claimant or corporation all benefits paid or payable plus interest, unless the contractor and the subcontractor have agreed in writing that the contractor will provide coverage.

(e) A subcontractor providing services in conjunction with a contractor on the same project or contract work is not liable for the payment of compensation to the employees of another subcontractor or the contractor on such contract work and is protected by the exclusiveness-of-liability provisions of s. 440.11 from any action at law or in admiralty on account of injury to an employee of another subcontractor, or of the contractor, provided that:

1. The subcontractor has secured workers' compensation insurance for its employees or the contractor has secured such insurance on behalf of the subcontractor and its employees in accordance with paragraph (b); and

2. The subcontractor's own gross negligence was not the major contributing cause of the injury.

(f) If an employer fails to secure compensation as required by this chapter, the department shall assess against the employer a penalty not to exceed \$5,000 for each employee of that employer who is classified by the employer as an independent contractor but who is found by the department to not meet the criteria for an independent contractor that are set forth in s. 440.02. The department shall adopt rules to administer the provisions of this paragraph.

(g) Subject to s. 440.38, any employer who has employees engaged in work in this state shall obtain a Florida policy or endorsement for such employees which utilizes Florida class codes, rates, rules, and manuals that are in compliance with and approved under the provisions of this chapter and the Florida Insurance Code. Failure to comply with this paragraph is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The department shall adopt rules for construction industry and nonconstruction-industry employers with regard to the activities that define what constitutes being “engaged in work” in this state, using the following standards:

1. For employees of nonconstruction-industry employers who have their headquarters outside of Florida and also operate in Florida and who are routinely crossing state lines, but usually return to their homes each night, the employee shall be assigned to the headquarters’ state. However, the construction industry employees performing new construction or alterations in Florida shall be assigned to Florida even if the employees return to their home state each night.

2. The payroll of executive supervisors who may visit a Florida location but who are not in direct charge of a Florida location shall be assigned to the state in which the headquarters is located.

3. For construction contractors who maintain a permanent staff of employees and superintendents, if any of these employees or superintendents are assigned to a job that is located in Florida, either for the duration of the job or any portion thereof, their payroll shall be assigned to Florida rather than the headquarters’ state.

4. Employees who are hired for a specific project in Florida shall be assigned to Florida.

(2) Compensation shall be payable irrespective of fault as a cause for the injury, except as provided in s. 440.09(3).

*History.—s. 10, ch. 17481, 1935; CGL 1936 Supp. 5966(10); s. 4, ch. 18413, 1937; s. 6, ch. 74-197; s. 23, ch. 78-300; ss. 5, 124, ch. 79-40; s. 21, ch. 79-312; s. 2, ch. 80-236; s. 14, ch. 86-171; ss. 7, 43, ch. 89-289; ss. 15, 56, ch. 90-201; ss. 11, 52, ch. 91-1; s. 4, ch. 91-2; s. 7, ch. 93-415; s. 104, ch. 97-103; s. 4, ch. 98-174; s. 15, ch. 2002-194; s. 7, ch. 2002-236; s. 470, ch. 2003-261; s. 8, ch. 2003-412.*

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**440.103 Building permits; identification of minimum premium policy.**—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer’s authority to self-insure and shall

be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(23), for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words “minimum premium policy” or equivalent language shall be typed, printed, stamped, or legibly handwritten.

*History.—s. 10, ch. 93-415; s. 5, ch. 98-174; s. 17, ch. 2002-194; s. 472, ch. 2003-261; s. 10, ch. 2003-412; s. 12, ch. 2014-154; s. 9, ch. 2019-75; s. 111, ch. 2020-2; s. 3, ch. 2021-212.*

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#### **440.16 Compensation for death.—**

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(a) Within 14 days after receiving the bill, actual funeral expenses not to exceed \$7,500.

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed \$150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 662/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse’s death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 162/3 percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 331/3 percent for each child. However, upon the surviving spouse’s remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the \$150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. In no case shall a surviving spouse’s acceptance of a lump-sum payment affect payment of death benefits to other dependents.



3. To the child or children, if there is no spouse,  $33\frac{1}{3}$  percent for each child.  
4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(c) To the surviving spouse, payment of postsecondary student fees for instruction at any career center established under s. 1001.44 for up to 1,800 classroom hours or payment of student fees at any community college established under part III of chapter 1004 for up to 80 semester hours. The spouse of a deceased state employee shall be entitled to a full waiver of such fees as provided in ss. 1009.22 and 1009.23 in lieu of the payment of such fees. The benefits provided for in this paragraph shall be in addition to other benefits provided for in this section and shall terminate 7 years after the death of the deceased employee, or when the total payment in eligible compensation under paragraph (b) has been received. To qualify for the educational benefit under this paragraph, the spouse shall be required to meet and maintain the regular admission requirements of, and be registered at, such career center or community college, and make satisfactory academic progress as defined by the educational institution in which the student is enrolled.

(2) The dependence of a child, except a child physically or mentally incapacitated from earning a livelihood, shall terminate with the attainment of 18 years of age, with the attainment of 22 years of age if a full-time student in an accredited educational institution, or upon marriage.

(3) Where, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the total percentage payable to all persons having priority of preference, will not exceed a total of said  $66\frac{2}{3}$  or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

(4) If the judge of compensation claims determines that payments in accordance with paragraph (3)(b) would provide no substantial benefit to any person of such class, the judge of compensation claims may provide for the payment of such compensation to the person or persons within such class who the judge of compensation claims considers will be most benefited by such payment.

(5) Upon the cessation of compensation under this section to any person, the compensation of the remaining persons entitled to compensation, for the unexpired part of the period during which their compensation is payable, shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

(6) Relationship to the deceased giving right to compensation under the provisions of this section must have existed at the time of the accident, save only in the case of afterborn children of the deceased.

*History.*—s. 16, ch. 17481, 1935; s. 7, ch. 18413, 1937; CGL 1936 Supp. 5966(16); s. 5, ch. 20672, 1941; s. 1, ch. 26966, 1951; ss. 4-6, ch. 28241, 1953; s. 1, ch. 57-143; s. 2, ch. 67-239; ss. 17, 35, ch. 69-106; s. 6, ch. 73-127; s. 11, ch. 74-197; s. 8, ch. 75-209; s. 23, ch. 78-300; ss. 12, 124, ch. 79-40; ss. 9, 21, ch. 79-312; s. 2, ch. 82-237; s. 11, ch. 86-171; s. 4, ch. 87-330; ss. 13, 43, ch. 89-289; ss. 21, 56, ch. 90-201; ss. 19, 52, ch. 91-1; s. 28, ch. 91-46; s. 62, ch. 92-136; s. 21, ch. 93-415; s. 3, ch. 98-125; s. 1002, ch. 2002-387; s. 20, ch. 2003-412; s. 56, ch. 2004-64; s. 39, ch. 2004-357; s. 3, ch. 2014-109.

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**440.185 Notice of injury or death; reports; penalties for violations.—**

(1) An employee who suffers an injury arising out of and in the course of employment shall advise his or her employer of the injury within 30 days after the date of or initial manifestation of the injury. Failure to so advise the employer shall bar a petition under this chapter unless:

- (a) The employer or the employer's agent had actual knowledge of the injury;
- (b) The cause of the injury could not be identified without a medical opinion and the employee advised the employer within 30 days after obtaining a medical opinion indicating that the injury arose out of and in the course of employment;
- (c) The employer did not put its employees on notice of the requirements of this section by posting notice pursuant to s. 440.055; or
- (d) Exceptional circumstances, outside the scope of paragraph (a) or paragraph (b) justify such failure.

In the event of death arising out of and in the course of employment, the requirements of this subsection shall be satisfied by the employee's agent or estate. Documents prepared by counsel in connection with litigation, including but not limited to notices of appearance, petitions, motions, or complaints, shall not constitute notice for purposes of this section.

(2) Within 7 days after actual knowledge of injury or death, the employer shall report such injury or death to its carrier, in a format prescribed by the department, and shall provide a copy of such report to the employee or the employee's estate. The report of injury shall contain the following information:

- (a) The name, address, and business of the employer;
- (b) The name, social security number, street, mailing address, telephone number, and occupation of the employee;
- (c) The cause and nature of the injury or death;
- (d) The year, month, day, and hour when, and the particular locality where, the injury or death occurred; and
- (e) Such other information as the department may require.

The carrier shall, within 14 days after the employer's receipt of the form reporting the injury, file the information required by this subsection with the department. However, the department may by rule provide for a different reporting system for those types of injuries which it determines should be reported in a different manner and for those cases which

involve minor injuries requiring professional medical attention in which the employee does not lose more than 7 days of work as a result of the injury and is able to return to the job immediately after treatment and resume regular work.

(3) Within 3 business days after the employer or the employee informs the carrier of an injury, the carrier shall send by regular mail or e-mail to the injured worker an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. Annually, the carrier or its third-party administrator shall send by regular mail or e-mail to the employer an informational brochure approved by the department which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. All such informational brochures shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits a felony of the third degree."

(4) Additional reports with respect to such injury and of the condition of such employee, including copies of medical reports, funeral expenses, and wage statements, shall be filed by the employer or carrier to the department at such times and in such manner as the department may prescribe by rule. In carrying out its responsibilities under this chapter, the department or agency may by rule provide for the obtaining of any medical records relating to medical treatment provided pursuant to this chapter, notwithstanding the provisions of ss. 90.503 and 395.3025(4).

(5) In the absence of a stipulation by the parties, reports provided for in subsection (2), subsection (3), or subsection (4) shall not be evidence of any fact stated in such report in any proceeding relating thereto, except for medical reports which, if otherwise qualified, may be admitted at the discretion of the judge of compensation claims.

(6) Every carrier shall file with the department within 21 days after the issuance of a policy or contract of insurance such policy information as the department requires, including notice of whether the policy is a minimum premium policy. Notice of cancellation or expiration of a policy as set out in s. 440.42(3) shall be mailed to the department in accordance with rules adopted by the department under chapter 120. The department may contract with a private entity for the collection of policy information required to be filed by carriers under this subsection and the receipt of notices of cancellation or expiration of a policy required to be filed by carriers under s. 440.42(3). The submission of policy information or notices of cancellation or expiration to the contracted private entity satisfies the filing requirements of this subsection and s. 440.42(3).

(7) When a claimant, employer, or carrier has the right, or is required, to mail a report or notice with required copies within the times prescribed in subsection (2), subsection (3),

or subsection (4), such mailing will be completed and in compliance with this section if it is postmarked and mailed prepaid to the appropriate recipient prior to the expiration of the time periods prescribed in this section.

(8) Any employer or carrier who fails or refuses to timely send any form, report, or notice required by this section shall be subject to an administrative fine by the department not to exceed \$500 for each such failure or refusal. However, any employer who fails to notify the carrier of an injury on the prescribed form or by letter within the 7 days required in subsection (2) shall be liable for the administrative fine, which shall be paid by the employer and not the carrier. Failure by the employer to meet its obligations under subsection (2) shall not relieve the carrier from liability for the administrative fine if it fails to comply with subsections (3) and (4).

(9) The department may by rule prescribe forms and procedures governing the submission of the change in claims administration report and the risk class code and standard industry code report for all lost time and denied lost-time cases. The department may by rule define terms that are necessary for the effective administration of this section.

(10) Upon receiving notice of an injury from an employee under subsection (1), the employer or carrier shall provide the employee with a written notice, in the form and manner determined by the department by rule, of the availability of services from the Employee Assistance and Ombudsman Office. The substance of the notice to the employee shall include:

(a) A description of the scope of services provided by the office.

(b) A listing of the toll-free telephone number of, the e-mail address, and the postal address of the office.

(c) A statement that the informational brochure referred to in subsection (3) will be mailed to the employee within 3 days after the carrier receives notice of the injury.

(d) Any other information regarding access to assistance that the department finds is immediately necessary for an injured employee.

*History.*—s. 10, ch. 75-209; s. 1, ch. 77-174; ss. 6, 23, ch. 78-300; ss. 14, 124, ch. 79-40; ss. 10, 21, ch. 79-312; s. 6, ch. 80-236; s. 276, ch. 81-259; s. 6, ch. 83-305; s. 8, ch. 86-171; s. 5, ch. 87-330; s. 5, ch. 88-203; ss. 14, 43, ch. 89-289; ss. 22, 56, ch. 90-201; ss. 20, 52, ch. 91-1; s. 29, ch. 91-46; s. 82, ch. 92-289; s. 22, ch. 93-415; s. 112, ch. 97-103; s. 4, ch. 98-125; s. 9, ch. 98-174; s. 3, ch. 98-407; s. 93, ch. 2000-153; s. 15, ch. 2001-91; s. 29, ch. 2002-194; s. 21, ch. 2003-412; s. 13, ch. 2004-6; s. 8, ch. 2013-141; s. 5, ch. 2016-56; s. 29, ch. 2017-3; s. 14, ch. 2022-138.

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**440.35 Record of injury or death.**—Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the department may by regulation require, and shall be available to inspection by the department or by any state authority at such time and under such conditions as the department may by regulation prescribe.

*History.*—s. 35, ch. 17481, 1935; CGL 1936 Supp. 5966(35); ss. 17, 35, ch. 69-106; s. 23, ch. 78-300; s. 124, ch. 79-40; s. 21, ch. 79-312; s. 43, ch. 89-289; s. 56, ch. 90-201; s. 52, ch. 91-1; s. 40, ch. 2002-194.

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