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How Much Do I Earn? Depends on Who's Asking

Consistency between Average Weekly Wage and IRS reporting

Section 440.02(28) defines wages, in part, as the money earned and reported for federal income tax purposes. As a result, all injured workers may not collect indemnity benefits unless, or until, the injured worker reports his/her wages to the IRS for tax purposes. That is true for illegal alien workers as well.

As such, Judges of Compensation Claims have been granted the jurisdiction and authority to determine whether an injured worker filed a tax return. The remaining question: what level of scrutiny will a JCC apply to injured workers' tax returns?

In Rene Stone Work Corp., et al v. Nelson Gonzalez, No. 1D09-3271, an illegal alien injured worker filed a tax return in January, 2009, four months after his work injury. The Employer/Carrier argued that the tax return did not report all of the Claimant's actual earnings. As a result, the defense argued that the Claimant's failure to meet specific IRS requirements when filing a return amounted to a failure to properly report wages pursuant to Section 440.02(28), thereby preventing entitlement to indemnity benefits.



The First District Court of Appeals in Tallahassee disagreed. The Court held that the IRS filing was sufficient enough to comply with Section 440.02(28). The Court had concerns about burdening JCC(s) by placing them "into a role of a mini-magistrate for the tax courts," and being forced to determine which injured workers properly completed and filed an annual tax return. See also, JBD Brother's and Masonry, Inc. v. Miranda (1D09-3402).

Although the actual decisions handed down by the Court with regard to the above cases were not very informative, there did appear to a plausible argument, using expert testimony, explaining why the IRS filing was not correct. Unfortunately, the most effort put forth by these Employer/Carriers was a vague reference to some IRS publication, which did not defeat the Certified Public Accountant's general testimony that the Claimant correctly reported his wages to the IRS.

By: Carla Wester

My Worker Is More Important Than Your's *Legislation to Create Exception to Attorney Fee Cap*



State Representatives Dwayne Taylor (D-Daytona Beach) and Kevin Ambler (R-Tampa) have proposed legislation, Bill 661, that would create an exception to the attorney fee cap for attorneys representing injured "first responders" - firefighters, paramedics, emergency medical technicians and police. According to this bill, filed on January 8th, the legislation's purpose furthers the State's interests in the "prompt and adequate response to provide for the safety of the public unique to first responders."

MIJS worries about this mole hill, which many will hope to turn into a mountain. If the Legislature begins creating attorney's fee cap exceptions, many more are certain to follow. This is particularly the case if the Legislature accepts the reasoning behind Bill 611: does anyone truly believe that first responders are currently operating at a lower standard because of concern that if an injury occurs, his/her attorney would be subject to the same attorney fee cap as every other injured worker?

As you know, beginning October 1, 2003, the law capped claimant's attorney's fees and limited the basis for attorney's fees to the value of the benefit the claimant's lawyer obtained for the injured worker. Claimants' attorneys fought the cap, arguing that it would deter lawyers from representing injured workers,

thereby limiting an injured worker's access to courts. Obviously however, it seems many attorneys have continued to represent injured workers.

In October, 2008, the Florida Supreme Court ruled in Emma Murray v. Mariner Health/ACE USA that the attorney fee cap conflicted with statutory language allowing a claimant and his/her lawyer to recover a "reasonable" fee from the employer/carrier after having successfully secured a benefit on the claimants' behalf. In response, 2009 legislation removed the word "reasonable" from the pertinent section of Chapter 440, ending that conflict.

Based on the Legislature's response to Emma Murray, MIJS trusts that the Florida Legislature will continue to support the attorney fee cap, and will avoid creating exceptions. Unfortunately, there is no current reported opposition to Bill 611. Presently, the bill is assigned to the House Government Affairs Committee. MIJS is preparing opposition letters/emails to members of this Committee and we would happily provide our form letter/email to any person who wishes to have a copy to send to his/her legislator as well.

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About Moore Ingram Johnson & Steele...

MIJS is a value oriented law firm focused on providing customized solutions for our clients. Based in Marietta, GA, MIJS offers a full spectrum of legal services ranging from general liability to transactional tax planning.

Our Tennessee offices, Knoxville and Nashville specialize in workers' compensation defense allowing us to aggressively minimize the overall expenses of claims. By leveraging the experience of thirteen comp attorneys, we help employers and insurers navigate Tennessee's workers' compensation system with an eye towards cutting costs. Opening additional offices allows us to better serve our clients by reducing travel time.

Our newest office in Jacksonville, Florida offers a full spectrum of legal services ranging from general liability to probate, and of course includes workers' compensation defense. We are eager to service new clients and provide quality legal services.

Please contact Troy Hart to see how MIJS can help you meet your case handling goals.

This is a legal advertisement. The articles are intended to provide background and general guidance to the FL workers' comp system. They are not intended as legal advice as each lawsuit is unique and requires specific analysis. Please contact MIJS to discuss the details of your claim.