

As to the scope of review, the statute in question limits the review to "insur[ing] compliance with the provisions and purposes of this chapter." Section 373.026(7), F. S. I read this as limiting the department's scope of review to a determination of whether the rule, order, etc., under review is consistent with the provisions and purposes expressed in Ch. 373, F. S. Only upon a finding by the department that the rule, order, etc., under review was in violation of Ch. 373, or was inconsistent with the purposes of Ch. 373, would there be grounds for a rescission or modification of the district's rule, order, etc. Also, since the district would ordinarily have held a public hearing pursuant to notice, as mandated by Ch. 120, *supra*, and §§373.113, 373.126, and 373.146, before issuing its rule, order, etc., it might be unnecessary for the department to duplicate this effort by having a *de novo* hearing on the matter. Review could ordinarily proceed on the basis of the record below. However, in exceptional cases, the department could consider the matter *de novo*.

073-388—October 16, 1973  
(See also 073-388A)

#### WORKMEN'S COMPENSATION

##### CHANGES EFFECTED BY NEW LEGISLATION

To: Thomas H. Johnson, Senator, 28th District, West Palm Beach

Prepared by: Sharyn Smith, Assistant Attorney General

##### QUESTIONS:

1. What are the effects of Ch. 73-127, Laws of Florida?
2. What effect does the repeal of §440.09(4), F. S., have upon Ch. 73-125, Laws of Florida?
3. If a firefighter were to suffer a heart attack while off duty, would the provisions of Ch. 73-125 allow this to be compensated under the provisions of Ch. 440, F. S.?

##### SUMMARY:

The repeal of §440.09(4), F. S., which reduced disability retirement compensation awarded employees of the state, a political subdivision thereof, or a quasi-public body therein by the amount of any award of workmen's compensation benefits has no effect upon the provisions of Ch. 73-125, Laws of Florida. Chapter 73-125, which contains the presumption that any condition or impairment of health of any Florida municipal county, port authority, special tax district, or fire control district fireman caused by tuberculosis, heart disease, or hypertension resulting in death or disability shall be presumed to have been accidental and suffered in the line of duty, merely authorizes governing bodies of municipalities, counties, port authorities, special tax districts, and fire control districts to negotiate life and disability insurance contracts which shall include such presumption. This presumption does not apply to claims for workmen's compensation benefits, nor does it modify the Workmen's Compensation Law.

##### AS TO QUESTION 1:

Chapter 73-127, Laws of Florida, amended and repealed certain sections of the Workmen's Compensation Law, Ch. 440, F. S. Section 440.02(1)(b)2. was amended at §1, Ch. 73-127, to define "employment" as all private employments in which one or more employees are employed by the same employer. Under former §440.02(1)(b)2., employment was defined to include all private employments in

which *three* or more employees are employed by the same employer. Thus, §1 of Ch. 73-127 extends the coverage provisions under Ch. 440 to all private employments of one or more employees from the former requirement of three or more employees.

Section 440.09(4), F. S., which reduced disability retirement compensation awarded employees of the state, a political subdivision thereof, or a quasi-public body therein by the amount of any award of workmen's compensation benefits has now been repealed by §2 of Ch. 73-127, *supra*.

The amount of disability time required before compensation shall be allowed, seven days, remains unchanged. See §440.12(1), F. S. However, §3, Ch. 73-127, *supra*, changes from twenty-one to fourteen days the amount of disability time which must be accrued before retroactive compensation will be awarded from the commencement of the disability.

Section 440.12(2), F. S. (1972 Supp.), was amended at §4, Ch. 73-127, *supra*, to increase the maximum amount of compensation after June 30, 1973, from sixty-six dollars per week to eighty dollars per week.

A new sentence regarding applicability of the old and new benefit amounts allowable by §440.12, F. S., was added to former §440.12(3) by §4 of the act, which states that ". . . [T]he provisions of this section as amended effective July 1, 1972, shall govern with respect to disability due to injuries suffered after June 30, 1972, and prior to July 1, 1973."

Section 5, Ch. 73-127, *supra*, added a new subsection (10) to §440.15, F. S., concerning the Federal Old Age, Survivors', and Disability Insurance Act, which provides that weekly workmen's compensation benefits are to be reduced by the amount paid under 42 U.S.C. §§423 and 402, to a sum which, by combining the workmen's compensation benefits and old age, survivors', and disability insurance, does not exceed 80 percent of the employee's average weekly wage. The above provision is inapplicable any weeks subsequent to the week in which the injured worker reaches the age of sixty-two. In the case of any increase or reduction in the percentage of combined benefits allowed to be paid, the amount or reduction of benefits provided for in subsection (10) shall be correspondingly increased or reduced. Section 440.15(10)(c) provides that workmen's compensation benefits may not be reduced until the Social Security Administration determines the amount otherwise payable to the employee under 42 U.S.C. §§423 and 402 and the employee has begun receiving such social security benefits.

Section 6, Ch. 73-127, *supra*, increased the maximum amount of actual funeral expenses an employer shall pay if death results within one year of the accident or follows continuous disability and results from the accident within five years thereafter, from five hundred dollars, see §440.16(1), F. S., to one thousand dollars. Section 6, Ch. 73-127, *supra*, amended §440.16(2), F. S., by eliminating the provision setting a limit of three hundred and fifty weeks during which compensation payments may be made, and by changing the fifteen thousand dollar maximum amount paid to the employee to twenty-five thousand dollars. All other provisions of §440.16 remain unchanged by §6 of Ch. 73-127 with the exception of the percentage paid to a dependent widower if there is no child, which increased from 35 percent of the average weekly wage to 60 percent of such wage. It should be noted that due to the aforementioned amendment, both widows and widowers who are similarly situated are treated equally for purposes of §6, Ch. 73-127.

Section 7, Ch. 73-127, *supra*, amended §440.36, F. S., by creating a new subsection (4) which requires every insurance carrier which writes workmen's compensation insurance covered under Ch. 440, F. S., to file with the Division of Labor and Employment Opportunities of the Department of Commerce written notice within ten days after the policy, contract of insurance, or a renewal certificate.

Section 8, Ch. 73-127, amended §440.43, F. S., to include a provision allowing the Division of Labor and Employment Opportunities of the Department of

Commerce to enjoin an employer from employing individuals and conducting business until payment for compensation has been secured, provided, however, that the employer, upon written notice from the division, has seventy-two hours to secure such compensation prior to the filing of the complaint. All complaints are filed by the division in the circuit court of the county in which the employer may be doing business.

#### AS TO QUESTION 2:

The repeal of §440.09(4), F. S., affects Ch. 73-125, Laws of Florida, to the extent that it removes the statutory requirement that disability pensions be reduced by the amount of workmen's compensation awarded an employee when the employer is the state, a political subdivision of the state, or a public or quasi-public corporation within the state. *City of Miami v. Graham*, 138 So.2d 751 (Fla. 1962); AGO 073-62. Subsection (2) of §112.18, F. S., added by §1 of Ch. 73-125, authorizes the governing body of any municipality, county, port authority, special tax district, or fire control district to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage which shall include the presumption that:

any condition or impairment of health of any fireman caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty, unless the contrary be shown by competent evidence.

Although §112.18, F. S., as amended by §1 of Ch. 73-125, *supra*, contains the following statement: ". . . Nothing herein shall be construed to extend or otherwise affect the provisions of §440.09(4) pertaining to workman's compensation," the express repeal of §440.09(4), F. S., by §2 of Ch. 73-127, *supra*, operates to nullify or render legally inoperative that provision of §112.18, as amended by Ch. 73-125, *supra*.

#### AS TO QUESTION 3:

If a firefighter were to suffer a heart attack while off duty, the provisions of Ch. 73-125, *supra*, would not allow it to be compensable under the provisions of Ch. 440, F. S. The presumption contained at §112.18(1), F. S., that

[a]ny condition or impairment of health of any Florida municipal, county, port authority, special tax district or fire control district fireman caused by tuberculosis, heart disease or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence . . . .

does not apply to claims for workmen's compensation benefits, nor does it modify the Workmen's Compensation Law. This presumption refers only to disability or death benefits, disability pensions, or death payments which may be provided for by law and, in accordance with Ch. 73-125, may also be provided for by contract between the insurer and the governmental employer. Essentially the same presumption is found at §175.231, F. S., which provides that such presumption is applicable *only* with reference to pension and retirement benefits under Ch. 175, F. S. In workmen's compensation cases, there is no presumption that an injury for which compensation is claimed is causally connected to the claimant's employment. Every claimant must prove that a causal connection exists between his employment and the injury in order to recover. *Gadsden County Board of Public Instruction v. Dickson*, 191 So.2d 562 (Fla. 1966).