

How Tort Reform Cut Florida Workers' Compensation Costs

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Could tort reform reduce health care costs? Using the legal system to resolve patient injury claims is expensive and inefficient. The cost of litigation — principally attorneys' fees — raises claim costs, adding billions of dollars a year to premiums for workers' compensation and health insurance.



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The threat of litigation leads doctors to practice defensive medicine — ordering unnecessary tests and procedures to avoid lawsuits — which also adds to the country's medical bills.

In 2003, Florida passed tort reform to tackle the issue of excessive litigation in workers' compensation cases. The reform law also aimed to contain medical costs for injured workers, which were higher than group health insurance costs for similar injuries.

The reforms lowered workers' compensation costs for businesses. Employees also have benefited. First, injured workers returned to work sooner, which means they will earn more wages over their work-lives. Second, workers kept a greater percentage of the amount they were awarded for lost wages. Finally, higher wage-and-employment growth in Florida compared to neighboring states has increased opportunities for all workers in the state.

The results from Florida show the promise of more general tort reforms to reduce the rate of growth in health care spending.

How Workers' Compensation Works. In Florida, as in most states, businesses are required to self-insure or to carry workers' compensation insurance covering state-mandated benefits. Employers pay for all medical

treatments of workers injured on the job and replace most of injured workers' lost wages. (For details, see N. Michael Helvacian, "Workers' Compensation: Rx for Policy Reform," NCPA Policy Report No. 287, September 2006.) Big corporations have the financial reserves to self-insure for these expenses, but most small businesses do not and must purchase coverage from private insurers at a substantially higher cost.

Workers' compensation systems are designed to be self-executing: Injured workers automatically receive state-mandated benefits without the need to prove in court either negligence or liability by employers. Nevertheless, the degree of attorney involvement and litigation is high and increasing in many states. Attorneys generally keep one-quarter to one-third of the lump-sum benefits awarded to the injured employees.

In 2002, according to the National Council on Compensation Insurance, Florida had the highest workers' compensation premium rates of any state. Costs for employers — both the self-insured and those that bought coverage — were rising much faster than either medical costs or wages.

Limiting Attorneys' Fees. Outside of the workers' compensation system, attorneys' fees in tort lawsuits are typically limited to one-third to one-half of the amount awarded a plaintiff. In Florida, by contrast, prior to 2003, attorneys involved in smaller workers' compensation claims charged for the number of hours spent litigating a case. Since attorneys could charge for

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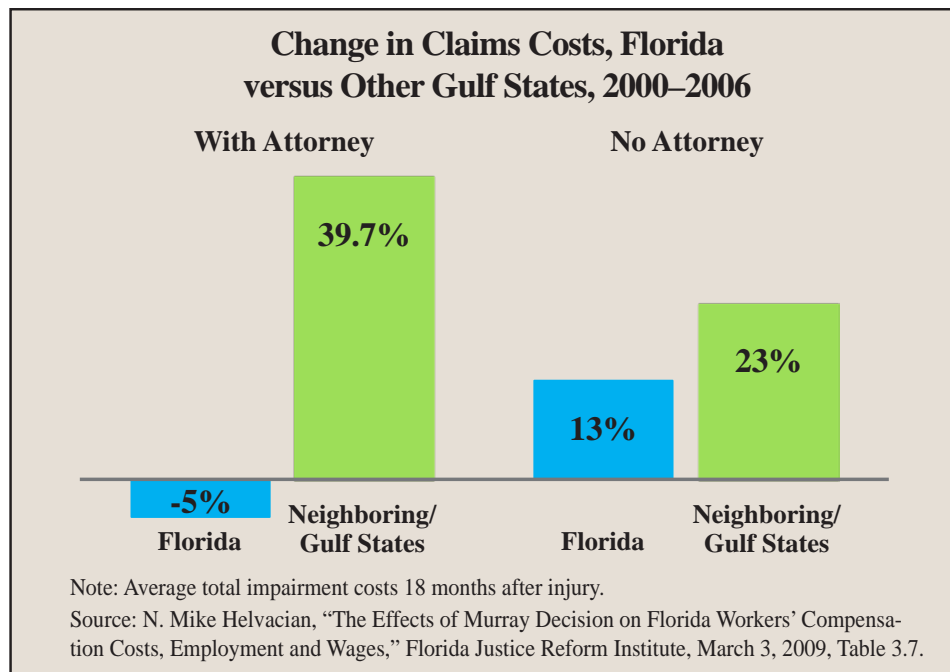
an unlimited number of hours, their fees could be greater than the benefits received by the injured worker. On larger claims where there was a lump-sum settlement, an attorney's take averaged about 25 percent of the lump-sum amount, net of other expenses. For successful claims, the injured worker's employer and the workers' comp insurer paid the fees.

The new law required attorneys in most cases to base their fees on the value of benefits they secured for their clients — measured in permanent partial disability claims by the monetary amount ultimately awarded to the claimant above the initial offer by the employer or insurer to settle the claim. This gave employers and insurers an incentive to make their best settlement offers at the start. It also discouraged attorneys from representing claimants when it was unlikely their work would add significantly to the final award.

Most of the savings under the reforms were due to less attorney involvement in permanent partial disability claims. These claims often involve injuries that are difficult to diagnose and treat. Litigation in these cases is expensive and can take years, during which workers are generally not employed.

While Florida reined in claims costs, they exploded in the neighboring states of Georgia, Alabama, Mississippi and Louisiana [see the figure]:

- Whereas total average costs without attorney representation increased 13 percent in Florida for permanent partial disability claims, costs in the other Gulf states increased 23 percent.
- Costs in cases with attorney representation fell 5 percent in Florida, while increasing almost 40 percent in the other Gulf states!



Overall, an analysis of the claims data shows that over the 2003 to 2008 period, limits on attorneys' fees reduced Florida's workers' compensation system costs 28.6 percent, accounting for a large component of the 60.5 percent decline in employers' insurance premiums.

By 2009, Florida workers' comp rates were among the lowest in the country for similar occupations. The time required to resolve claims fell significantly, whether or not attorneys were involved. This reduced overall costs and it also reduced the average time before workers returned to gainful employment. Over the 2003 to 2008 period, lost-wage compensation costs increased only 0.8 percent, whereas in other Gulf states they increased 24.0 percent.

Limiting Medical Costs. Although limits on attorney fees were responsible for most of the savings in Florida, the reforms also included controls on treatment that slowed the rise in medical costs. Before the reforms, for example, an injured worker could get second opinions from a

variety of specialists. The reforms limited them to one independent specialist. As a result of the changes, over the 2003 to 2008 period, medical costs in Florida's workers' comp system increased by less than a quarter (22.4 percent). In the other Gulf states, medical costs increased by nearly one-third (31.6 percent).

Further Developments. In October 2008 the Florida Supreme Court threw out the limits on attorney fees. However, the Florida legislature has passed, and Gov. Charlie Crist signed (May 2009), legislation designed to salvage the 2003 reforms while complying with the Court's objections.

Conclusion. Florida's experience shows the ability of tort reform to reduce litigation costs without harm to the injured. Applied nationwide, such reforms could potentially shave billions of dollars off the nation's health care bills while improving the quality of patient care.

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