

Ruling could boost the cost of workers' comp insurance

BY PAUL BRINKMANN

A recent workers' compensation ruling by the 1st District Court of Appeal could have a major impact on business, legal and industry associations said.

Most worrisome for business owners: Workers' comp insurance costs could rise.

The court ruled Feb. 28 that a St. Petersburg firefighter who was injured on the job should have been granted longer workers' comp coverage.

Firefighter Bradley Westphal deserved up to five years of benefits because he was totally disabled, rather than the two years of benefits allowed under the current state law.

A blog post by Hinshaw & Culbertson attorneys Cheryl Wilke, of Fort Lauderdale, and Jeffrey Novell, of Tampa, said the court opinion was "scathing" in that it found that Westphal had been denied access to the courts.

Basically, the court invalidated a portion of state law enacted in 1994 that revised entitlement to "temporary total" benefits to 104 weeks from 260 weeks.

The court noted that most other states allow a minimum of 312 weeks.

"This case has a tremendous impact on the current cases nearing the 104-week mark, as well as those currently in litigation for permanent and total disability benefits," Wilke and Novell wrote.

AIF: 'SIGNIFICANT RATE AND CLAIMS IMPACTS'

Associated Industries of Florida held a conference call about the ruling. Several law firms put out news releases and alerts to clients about the case.

An AIF announcement said the case "arguably represents a significant impact to the workers' compensation system" that could apply to all cases dating back to 1994, when state law was changed.

"Accordingly, this case could have significant rate and claims impacts for many employers and carriers across the state," the AIF release said.

Defense attorney Karen Gilmartin, a shareholder in the Miami office of Kelley Kronenberg, said the ruling itself applies to a narrow band of workers' comp claims because, although Westphal was totally disabled, it was a temporary disability from an injury.

The language of the ruling only applied to "temporary total disability," but Gilmartin said she believes there will be an effort to apply it to other classes of disability, such as temporary partial disability.

Gilmartin said she expects the Florida Legislature to address the Westphal case, but she is not sure how fast it will act.

'REASONABLE' NO LONGER A REQUIREMENT

In 2008, the Legislature acted quickly to limit the impact of a high court ruling on workers' comp. The Florida Supreme Court had ruled that plaintiff attorneys' fees in a case brought by a nurse, Emma Murray, were unreasonable, while state law required them to be "reasonable."

The Legislature's fix was to remove the word "reasonable" from the statute.

"This [Westphal] case will be a little more complicated, I think," Gilmartin said.

An article on WorkersCompensation.com, a website dedicated to the issue, said the decision "has potentially enormous ramifications for the workers' compensation industry, employers and claimants in the state."

A study released Jan. 2 by the Florida Office of Insurance Regulation said Florida's market for workers' compensation insurance remained "competitive" in 2012, and identified ways to keep costs down.

THE DETAILS

The ruling

"This system of redress does not comport with any notion of natural justice, and its result is repugnant to fundamental fairness, because it relegates a severely injured worker to a legal twilight zone of economic and familial ruin."

1st District Court of Appeal's opinion on *Westphal v. City of St. Petersburg*

THE DETAILS

What the legal experts are saying



Wilke



Novell

■ **Cheryl Wilke and Jeffrey Novell, Hinshaw & Culbertson attorneys:** "This case has a tremendous impact on the current cases nearing the 104-week mark, as well as those currently in litigation for permanent and total disability benefits."



Gilmartin

■ **Karen Gilmartin, Kelley Kronenberg shareholder:** "We suspect injured workers and their attorneys may seek to apply this to all of their cases, which would basically double the exposure of my clients."