FLORIDA TORT LAW REFORM

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HEADLINES:

- **Florida implemented tort law reform on March 24, 2023, transforming the state's insurance and litigation landscape.**
- **Shift from comparative to modified negligence: a plaintiff can no longer claim damages if they are deemed to be above the 50% responsibility fault line.**
- **Statute of limitations for general negligence has been reduced from four to two years for all causes of action.**
- **One-way statutory entitlement for payment of legal costs relating to disputes with insurers has been eliminated.**
- **Medical expense claims have been capped.**

CONTEXT

On March 24, 2023, Florida implemented significant tort law reforms that have brought in structural changes to litigation claims for negligence and injury. These reforms have far-reaching implications across all business insurance and risk management practices, and particularly for those in the restaurant and hospitality sector. As an insurance holder, it is important to consider and review existing policies with these changes in mind. Key areas to focus on include:

- Understanding the modified liability standards
- Revisiting coverage limits
- Assessing the impact on personal injury claims
- Evaluating overall insurance needs

"In general, the view was that Florida was a plaintiff-oriented state, very friendly to plaintiffs on any issue, whether it be in liability cases or workers' compensation cases. The tort law reforms were such a momentous change, and some people were shocked and surprised that it got pushed through. They knew that getting their claim in before the change took effect could be a far more lucrative situation. That's why we saw so many lawsuits filed before the 24th of March cut-off deadline for pre-reform submissions."

Jay Gates — Restaurant practice, Managing Director, Gallagher

BACKSTORY

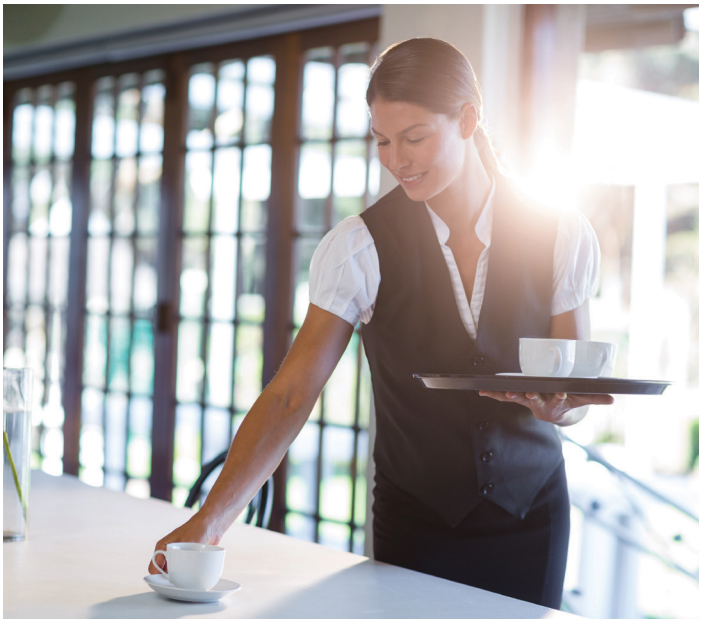
Prior to the changes in March 2023, the tort law landscape in Florida posed challenges and complexities. Negligence and injury claims often resulted in lengthy litigation processes, high claim costs and uncertainty for insurance providers and risk management stakeholders.

Insurance companies struggled to assess liability and accurately determine appropriate coverage limits. Additionally, a four-year statute of limitations — Florida being an outlier in terms of US states still maintaining this length of statute — allowed claimants ample time to initiate lawsuits, contributing to a backlog of cases and increasing costs for insurers.

The tort law reforms aimed to address these challenges by introducing substantial structural changes to negligence and injury claims.

However, before the law came into effect, **more than 90,000 cases were submitted in seven days, compared to c. 27,500 in the previous three months**.[1] This surge indicates the level of concern regarding the sweeping changes to Florida law.

So, what are the changes and what do they mean for you and your business?



KEY TORT LAW REFORM CHANGES

1. Shift from comparative to modified negligence standard

Under the reform, Florida shifted from comparative to modified negligence.[2] Comparative negligence allowed plaintiffs to claim damages even if they were only partially at fault for the incident. However, the modified negligence provision now stipulates that a plaintiff cannot claim negligence or injury damages if they are deemed to be above the 50% responsibility fault line for the incident.

Insurance holders can benefit from the shift to **modified negligence** as it **clarifies liability and claims assessments for insurers**. Plaintiffs determined to be at significant fault may be barred from recovering damages, reducing claim numbers and costs and providing more predictability in insurance pricing. However, the legal process of establishing if a plaintiff is more than 50% at fault will require additional resources and legal support. Moreover, increased litigation to determine fault percentages may lead to lengthy and complex legal proceedings with higher costs for both parties.

Establishing plaintiff fault within the 50% threshold **involves gathering evidence, witness testimonies and expert opinions**. The burden of proof lies with the defendant or the insurance company, and courts evaluate the evidence presented to determine the percentage of fault assigned to the plaintiff. Previously, if a plaintiff were 60% at fault for their injuries, they would still be able to recover 40% of damages; however, now if the plaintiff is found to be more than 50% at fault,[3] no recovery damages can be made at all.

2. New standards for bad faith claims

Changes have also been implemented with regards to bad faith claims, which refer to cases where a plaintiff seeks to claim damage against an insurer for not paying a share as expected. The changes in the law establish new standards and criteria for bad faith[4] claims, aiming to strike a balance between protecting policyholders' rights and preventing frivolous or excessive lawsuits.

Under the revised law, insurers can avoid bad faith action by promptly offering policy limits or the demanded amount within 90 days of receiving notice. Failure to do so is not considered bad faith and does not affect the statute of limitations. Mere negligence is not enough to prove bad faith. Insured individuals and claimants must act in good faith when providing information and settling claims.

[1] www.porterwright.com/media/insurance-intermediaries-guide-to-the-florida-tort-reform-act/

[2] https://www.adamsandreese.com/news-knowledge/florida-tort-reform-hb-837#:~:text=On%20March%2024%2C%202023%2C%20Florida,to%20overhaul%20Florida%27s%20litigation%20landscape

[3] https://www.insurancejournal.com/news/southeast/2023/06/06/724220.htm

[4] https://www.jimersonfirm.com/blog/2023/04/florida-tort-reform-statute-of-limitations-change/#:~:text=However%2C%20effective%20March%2024%2C%202023,down%20to%20only%20two%20years

In a bad faith lawsuit, the factfinder can consider the parties' good faith actions and reduce damages awarded against the insurer. If multiple claimants have competing claims exceeding policy limits, the insurer is not liable if they initiate interpleader action or follow arbitration procedures within 90 days of notification.

These changes provide insurers with various means to avoid liability for acting in bad faith, or reduce the amount they have to pay if the insured party demonstrates their own bad faith. Additionally, a shorter statute of limitations will significantly limit plaintiffs' capacity to pursue baseless bad faith claims. These modifications favor the insurer by substantially restricting the opportunities for meritless bad faith claims.

3. Two-year statute of limitations

The statute of limitations has now been reduced[5] from four to two years; claimants now have a **shorter timeframe to file a lawsuit** after an incident. This will impact insurance providers' claim investigations, assessments and settlement negotiations.

Reducing the statute of limitations is expected to have a two-fold effect. Firstly, it may reduce the number of claims going to court, as claimants have a shorter timeframe to file lawsuits. Secondly, it may encourage early settlement negotiations and out-of-court resolutions, as both parties have a tighter cutoff for claim assessment and settlement discussions.

4. Elimination of one-way statutory entitlement

The reform also removes the one-way statutory entitlement for payment of legal costs[6] relating to disputes with insurers. This is aimed at promoting fairness and discouraging excessive litigation by reducing the financial incentive for claimants.

This elimination of legal fees benefits insurance companies by **reducing the potential financial burden of high legal costs**. This change encourages a more balanced approach to litigation and aims to deter frivolous or excessive claims.

5. Checklist for property owners

There is now an established checklist of actions that premises and property owners must satisfy to ensure appropriate precautions are taken, and that necessary safety measures are implemented to minimize the risk of accidents or injuries. Failure to meet these requirements may impact liability in negligence claims.

6. Introduction of medical expense claim caps

Financial caps have now been placed on medical expense claims related to negligence and injury. Claimants may be limited in the amount they can demand for medical expenses resulting from negligence or injury. These caps[7] control the rising medical costs and prevent excessive claims, providing more stability and predictability for insurance providers.

The reform modifies the types of evidence plaintiffs can use to show past and future[8] medical expenses. Plaintiffs were previously allowed to claim for the total medical bills charged for services delivered, except those reimbursed by health insurance. If there is no insurance, only evidence of **120% of the Medicare reimbursement rate, or if no Medicare reimbursement rate exists, then 170% of the Medicaid reimbursement rate[9]** is admissible.

[5]https://www.americanbar.org/groups/litigation/committees/mass-torts/practice/2023/florida-tort-reform/#:~:text=The%20law%20specifically%20provides%20that,is%20also%20March%2024%2C%202023

[6]https://www.faegredrinker.com/en/insights/publications/2023/4/the-impact-of-florida-tort-reform-bill-on-insurance-litigation

[7]https://xinvestigations.com/2023/04/12/floridas-new-2023-tort-reform-law-who-stands-to-benefit/

[8]https://yourinjuryfirm.com/what-are-the-tort-laws-in-florida/#:~:text=Tort%20laws%20deal%20with%20the,actions%20of%20the%20other%20party

[9]www.porterwright.com/media/insurance-intermediaries-guide-to-the-florida-tort-reform-act/

IMPACT ON INSURANCE PROVIDERS

The tort law reforms bring significant changes to insurance coverage provisions and risk management practices in Florida. Insurance companies must reassess their underwriting strategies, policy terms and pricing models to adapt to the new legal landscape.

Insurance companies must **revise insurance policies** to align with the modified negligence requirement and the new stipulations for premises and property owners. **Policy language and terms should be adjusted** to reflect the reduced statute of limitations and the introduction of financial caps on medical expense claims.

The reforms are likely to affect the nature and volume of claims. The shift to modified negligence may result in more disputed claims as defendants and insurance companies seek to establish the plaintiff's fault percentage. Insurers must allocate resources for thorough claim investigations and prepare themselves for potentially engaging in more litigation.

With the introduction of financial caps and checklist requirements, insurance providers must assess the adequacy of **liability limits and risk management provisions**. Adequate risk assessments, preventive measures and safety protocols will become crucial for premises and property owners to mitigate potential liability.

If a plaintiff seeks treatment under a **letter of protection**[10], this — and all medical expense bills — must be itemized and classified. Whether the plaintiff was referred for treatment under the letter of protection and who guided the plaintiff on this matter should be documented. Disclosure of the referral is permitted, notwithstanding the attorney-client privilege, if the plaintiff is referred for treatment under a letter of protection by their attorney; the financial relationship between the law firm and the medical provider is relevant to the bias of the testifying medical provider.

IMPACT ON INSURANCE HOLDERS

Insurance holders should assess their policies considering the reform, changes in negligence standards, reduced statute of limitations and the introduction of financial caps. They should work closely with the insurance providers to understand the impact on coverage and policy terms.

Business owners, premises/property owners and other stakeholders must **conduct thorough risk assessments to identify potential liabilities** and implement appropriate risk management measures. This may involve enhanced safety protocols, employee training and compliance with the checklist requirements.

Importantly, insurance holders should ensure they have a solid understanding of the new legal standards, the process for establishing fault percentages, and the implications for claims assessment and settlement negotiations.

Business owners may experience changes in insurance premiums and coverage terms as insurance providers adjust their underwriting practices to account for the modified negligence standard and other reform provisions. It is highly advisable that companies should review their policies, understand their potential liability and implement risk management strategies to minimize exposure to claims.

[10] Florida Passes Tort Reform: What You Need to Know | Marshall Dennehey

FLORIDA'S RESTAURANT AND HOSPITALITY OPERATIONS

Restaurant and hospitality operators — as well as smaller businesses such as convenience stores — could see benefits from the tort law reform. The shift to modified negligence will provide more clarity in assessing liability and determining fault percentages, reducing the likelihood of excessive damages awarded against them.

The **reduced statute of limitations and potential for early settlement negotiations may expedite claim resolutions and minimize legal expenses**, benefiting smaller businesses and restaurant operators.

These industries face unique risks, particularly in the areas of customer and worker accidents on company premises, and must prioritize safety measures and proactive risk management. Compliance with the new checklist requirements for premises and property owners is crucial. By enhancing risk management protocols, training employees, and ensuring regular inspections and maintenance, there should be a reduction in accidents, injuries and legal claims.

"The reforms may reduce your risk exposure, but they should not change your loss and safety strategy. Your risk management strategy must remain intact to help you defend that claim. Look at how you set your reserves, what your strategies are and work with your general counsel — or whoever you use for defense — to strategize moving forward."

Jay Gates

"If you're responsible for risk management and claims litigation in the restaurant industry, you'll know that customer slips and falls on your premises — as well as workers' compensation claims — are a big deal, and being aware of what's going on in Florida is really important for this sector. But these changes really do cross all industries and it's important to take the time to assess what they mean for you and your company."

Jay Gates

CONCLUSION

The overall intention in passing Florida's tort law reform is to bring fairness, efficiency and predictability to negligence and injury claims, with the aim of:

- Promoting personal responsibility by limiting the ability to claim damages when the plaintiff is predominantly at fault.
- Reducing litigation costs.
- Streamlining the claims process.

These reforms will significantly change negligence and injury claims. Insurance companies should review insurance policies to ensure adequate coverage within the new risk landscape. Adjustments to policy limits, coverage terms and risk management provisions may be required.

Insurance holders must also review their policies, reassess their coverage and risk management provisions and seek professional guidance where necessary.

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