

## **Recent successful constitutional challenges To state workers' compensation provisions**

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The following is a list of very recent constitutional rulings regarding state workers' compensation statutes:

### **State supreme court decisions:**

**Opt out statute:** The Oklahoma Supreme Court found that the 2014 “opt out” statute that allowed employers to leave the workers' compensation system, design their own system of benefits and review, and retain immunity from tort litigation was found unconstitutional under a “special law” provision of the Oklahoma Constitution in *Vasquez v. Dillard's, Inc.*, 381 P.3d 768 (Okla., 2016).

**Exclusion of farmworkers:** The New Mexico Supreme Court declared invalid the exclusion of farmworkers from workers' compensation coverage. The New Mexico Supreme Court concluded “that there is no unique characteristic that distinguishes injured farm and ranch laborers from other employees of agricultural employers, and such a distinction is not essential to accomplishing the Act's purposes.”). *Rodriguez v. Brand W. Dairy*, 378 P.3d 13, 22 (N.M. 2016):. Not every state will reach this result. See, for example, *Haney v. N. Dakota Workers Comp. Bureau*, 518 N.W.2d 195 (N.D. 1994), rejecting an equal protection challenge to the exclusion of farmworkers in North Dakota.

**Restrictions on claimants' attorneys' fees:** The Utah and Florida supreme courts have both rejected fee limitations on constitutional grounds. *Injured Workers Ass'n of Utah v. State*, 374 P.3d 14 (Utah 2016); *Castellanos v. Next Door Co.*, 192 So. 3d 431 (Fla. 2016). In Florida, the fee restrictions effectively eliminated the claimant's right to get an attorney which, the court said, is a “critical feature” of the workers' compensation system. In Utah, the court found the restriction to violate the separation of powers, concluding that the regulation of attorney fees is a judicial function and could not be set by the legislature. In Alabama, a trial court reached the same conclusion. *Clower v. CVS Caremark Corp.*, 01-CV-2013-904687 (Circuit Court of Jefferson County Alabama, May 8, 2017).

**Limits on duration of temporary benefits** were thrown out by the Florida Supreme Court as “not merely unfair, but fundamentally and manifestly unjust.” *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

**A 180 working days requirement before qualifying for benefits for carpal tunnel syndrome** did not pass due process muster before the Oklahoma Supreme Court. *Torres v. Seaboard Foods, LLC*, 373 P.3d 1057 (Okla. 2016), as corrected (Mar. 4, 2016)

**AMA Guides:** The Pennsylvania Supreme Court found the provision in the Pennsylvania workers' compensation statute that designated the most recent edition of the AMA Guides to the Evaluation of Permanent Impairment for use in determining impairment and cutoff of weekly benefits was an unconstitutional delegation of legislative power. *Protz v. Workers' Compensation Appeal Board*, \_\_\_ A 3d \_\_\_, 2017 WL 2644474 (Penna. June 20, 2017)

**Drug testing:** Denial of workers' compensation if a worker had a post-injury positive drug test held unconstitutional under Article 18, Section 8, of the Arizona constitution which has specific provisions regarding workers' compensation. The court held that the drug test exclusion "denies compensation to an injured worker unless the worker proves that a necessary risk or danger of employment wholly caused the accident. Specifically, if alcohol or illegal drug use contributed even slightly to the accident, section 23-1021(D) denies compensation to the employee...Article 18, Section 8 does not permit the legislature to limit legal causation in that manner." *Grammatico v. Industrial Com'n*, 117 P.3d 786, 791, 211 Ariz. 67, 72 (Ariz.,2005).

**Lower court decision:**

**Cap on PPD and failure to escalate PPD benefits** were found to violate equal protection by a trial court in Alabama (which also found attorneys' fee provision to violate due process, and then threw out the entire Alabama workers' compensation statute based on lack of a severability provision). *Clower v. CVS Caremark Corp.*, 01-CV-2013-904687 (Circuit Court of Jefferson County Alabama, May 8, 2017). This order has been stayed.