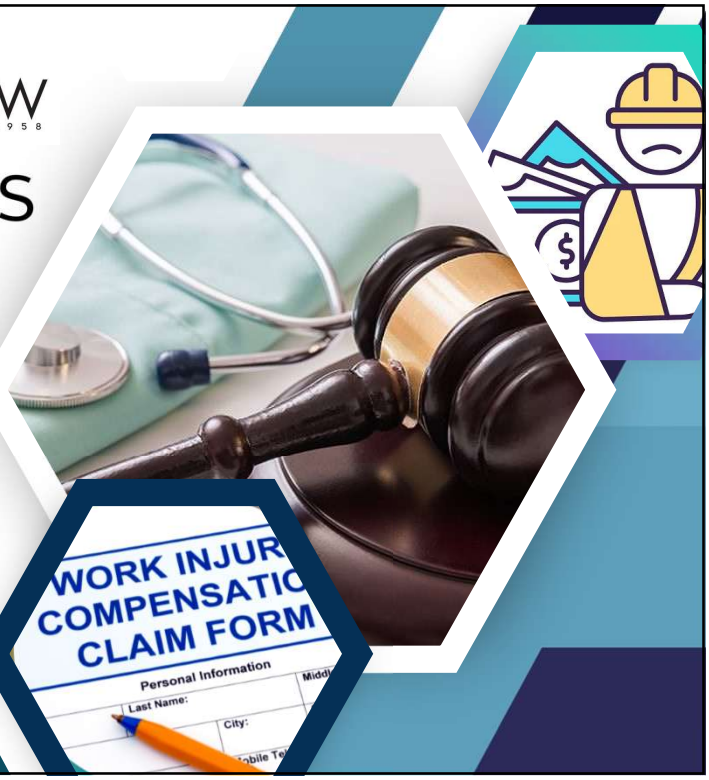
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When HR Meets Workers' Comp: Balancing People, Risk, and Claims



"TAKE CONTROL OF YOUR RISK"

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Our Presenters:



Steve Heinen, AAI, CWCP
Risk Management Advisor
EIG Risk



Zachary Rosenthal
Senior Risk Advisor
EIG Risk

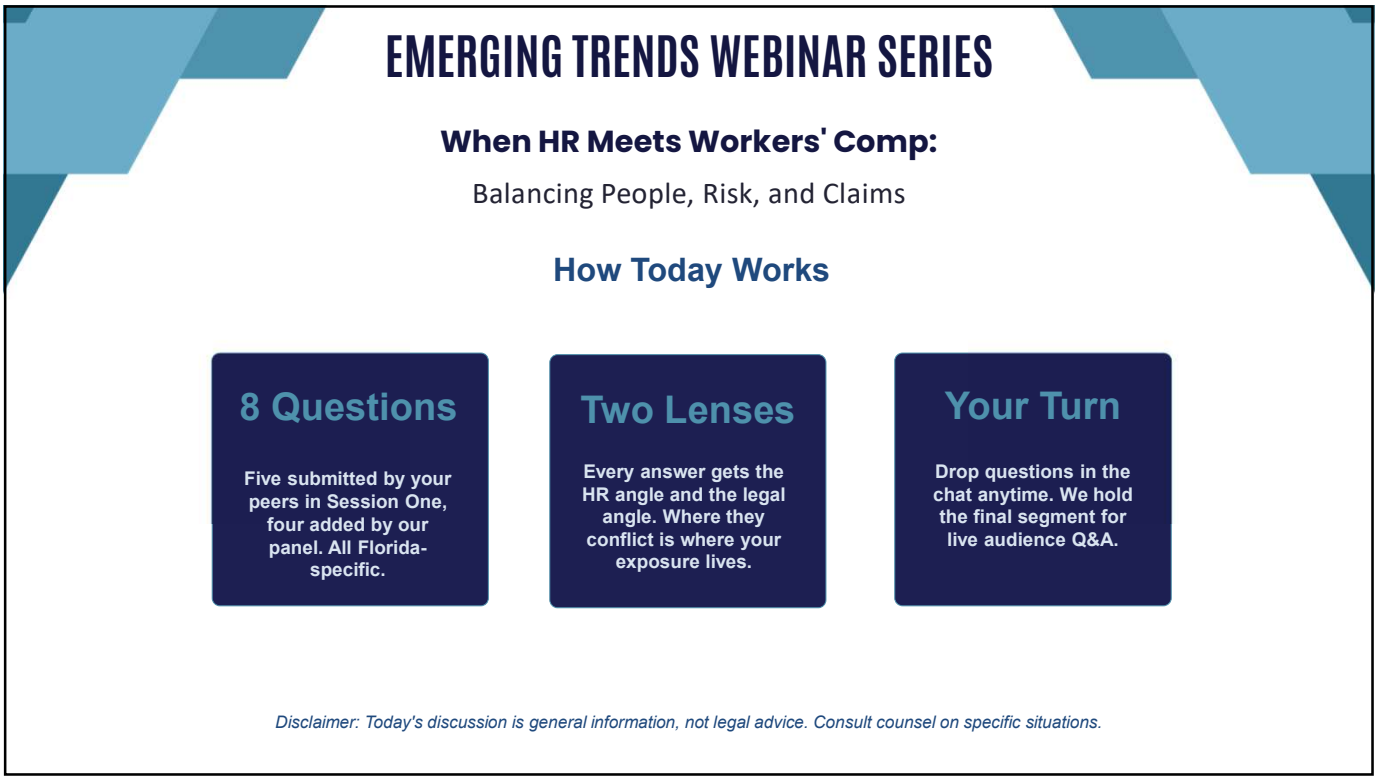


Omar Perez, Jr.
Equity Partner
MKRS Law



Jorge J. Rivero
Former Director U.S. Department of Labor
HRMCS

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How Today Works
8 Questions
Five submitted by your peers in Session One, four added by our panel. All Florida-specific.
Two Lenses
Every answer gets the HR angle and the legal angle. Where they conflict is where your exposure lives.
Your Turn
Drop questions in the chat anytime. We hold the final segment for live audience Q&A.
Disclaimer: Today's discussion is general information, not legal advice. Consult counsel on specific situations.

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P1 - Pre-hire
1. Drug-free Workplace
2. Job Descriptions
3. Integrity Testing
P2 - Post-offer
1. Drug-test
2. Post-offer Health Questionnaire
3. New Hire Safety Training
P3 - Prevention
1. On-going Training
2. Supervisor Leadership
3. RTW Process
P4 - Post-claim
Accident Reporting
Incident Investigation
Management
Leadership

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PANEL ADD • LEAVE STACKING

Q1 **WC leave, FMLA, and ADA leave can all apply to the same injury. How should they run, concurrently or in sequence, and what happens when FMLA runs out?**

THE HR ANGLE — Jorge

- Designate FMLA concurrently with comp leave from day one, or you owe it twice
- When FMLA exhausts, the ADA analysis begins. Additional leave can be an accommodation

THE LEGAL ANGLE — OMAR

- Automatic termination at FMLA exhaustion is an EEOC target, no bright-line maximums
- Each framework has its own reinstatement rights, track them separately

FLORIDA FOCUS: FMLA × ADA × Chapter 440

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LIGHT DUTY × ATTENDANCE

Q2 **Can you ever terminate an employee with an open WC claim in Florida, and if the reason is legitimate, how do you make the decision defensible?**

THE HR ANGLE — Jorge

- Yes, for documented, pre-existing, consistently enforced reasons
- The file must predate the claim: performance history, warnings, comparators

THE LEGAL ANGLE — OMAR

- Fla. Stat. §440.205 bars retaliation for pursuing a claim, timing is Exhibit A
- A 'by the book' termination can still be evidence of pretext

FLORIDA FOCUS: FL §440.205 — Retaliation

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BENEFITS DURING A CLAIM

Q3 **What are an employer's obligations around health insurance/PTO/401(k) while a WC claim is open, and where do employers most commonly get tripped up?**

THE HR ANGLE — Jorge

- Health coverage, PTO accrual, 401(k) treatment, handbook language controls, so audit it
- If FMLA runs concurrently, group health must continue on the same terms

THE LEGAL ANGLE — OMAR

- Cutting benefits mid-claim reads as retaliation, even when the policy allows it
- Inconsistent treatment across claimants is the pattern attorneys look for

FLORIDA FOCUS: FMLA concurrency + §440.205 exposure

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FUNCTIONAL CAPACITY × RTW

Q4 **If a returning employee can't perform the modified duty you've offered, driving or physical demands, what are your options, and where does the ADA intersect with WC?**

THE HR ANGLE — Jorge

- WC light duty and ADA reasonable accommodation are separate analyses. Run both.
- '100% healed' policies are per-se ADA violations. Kill them now
- The ADA interactive process must be documented, not just performed

THE LEGAL ANGLE — OMAR

- Refusing suitable modified duty can suspend indemnity, but 'suitable' is contested

FLORIDA FOCUS: ADA × Chapter 440 overlap

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PANEL ADD • THE 120-DAY RULE

Q5 **Florida's 'pay and investigate' rule gives carriers 120 days to deny a claim they've started paying. What should employers be doing inside that window?**

THE HR ANGLE — Jorge

- The investigation window is the employer's best chance to surface facts. Don't go passive
- Witness statements, video, and supervisor reports lose value every day they wait

THE LEGAL ANGLE — OMAR

- Under §440.20(4), pay past 120 days without denial and compensability is waived
- Late employer input is the #1 reason questionable claims become accepted claims

FLORIDA FOCUS: FL §440.20(4) — 120-day rule

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PANEL ADD • DRUG-FREE WORKPLACE

Q6 **When you have a positive drug test what are the next steps? How is medical marijuana handled?**

THE HR ANGLE — Jorge

- A compliant §440.102 program requires notice, policy, and testing protocols, not just a form
- Medical marijuana cards do not exempt employees from your drug-free policy in FL

THE LEGAL ANGLE — OMAR

- A positive post-accident test can create a presumption the injury was drug-caused
- Program compliance earns a premium credit and preserves the intoxication defense

FLORIDA FOCUS: FL §440.102 / §440.09(3)

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SETTLEMENT CONFIDENTIALITY

Q7 **Confidentiality agreements are standard in settlements, but what happens when one party violates them, and how should employers protect themselves before signing?**

THE HR ANGLE — Jorge

- Train the small circle who knows the terms. Most breaches are internal and casual
- Social media clauses are now table stakes, on both sides

THE LEGAL ANGLE — OMAR

- Without a liquidated damages clause, proving breach damages is nearly impossible
- Washout settlements in FL: know what's confidential and what's public record

FLORIDA FOCUS: FL §440.20(11) washout settlements

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MULTI-STATE JURISDICTION

Q8 **When your employee lives in one state but works in another, which state's WC laws govern the claim, and how does that change your obligations?**

THE HR ANGLE — Jorge

- Where was the contract of hire made? Where is work principally localized?
- Remote and traveling employees may create coverage you didn't know you needed

THE LEGAL ANGLE — OMAR

- Employees can often choose the more favorable state. Benefits and rules differ sharply
- A Georgia-hired, Florida-working employee may trigger both states' acts

FLORIDA FOCUS: FL §440.09 extraterritorial provisions

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Zachary Rosenthal
Senior Risk Advisor
Zachary.Rosenthal@eigrisk.com
786-778-8845
EIG Risk

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Jorge J. Rivero
HRMCS
(888) 930 7089
info@hrmcs.com

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MKRS LAW EST. 1958

Omar Perez, Jr.
Equity Partner
MKRS Law
(305) 446-5228
omarp@mkrs.com

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Spin the Wheel



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