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***SPECIAL REPORT***

## Florida Case Study

# Can Floridians Afford to Be on Workers' Comp?



Written by Peter Rousmaniere

# Florida on Comp

For 100 years, American workers have depended on workers' compensation benefits when they are injured. These benefits often result in a significant cut in a worker's take-home pay. This is the second in a series of reports written by Peter Rousmaniere for WorkCompCentral investigating the effects of workers' compensation on injured workers and their households in various states. The first report, "Meet Tim: The Uncompensated Worker," is available online at [www.workcompcentral.com](http://www.workcompcentral.com).

## About the Author

Peter Rousmaniere is a journalist specializing in workers' compensation issues for several decades. He is the author of several WorkCompCentral special reports, including "Meet Tim: The Uncompensated Worker," published in January 2016, "Seismic Shifts," a report on the future of workers' compensation released in February 2015 and "We're Beating Back Opioids - Now What?" in June 2015. He lives in Woodstock, Vermont. [pfr@rousmaniere.com](mailto:pfr@rousmaniere.com)



# Case Study: Meet Maria & Frances



Meet Maria, a 30-year-old licensed vocational nurse who works full time at a long-term care facility in Jacksonville, Florida.

Licensed vocational nursing is a high-growth career in America. There are about 700,000 nurses nationwide and 44,000 in Florida alone. Their ranks grow by upwards of 2% a year. One of the better jobs for high school graduates that does not require a college education, licensed vocational nurses across the country earn more than \$40,000 a year on average. In order to become a vocational nurse, one must complete a one-year educational program and maintain a license.

Frances, at 24 years old, is one of the 86,000 nursing assistants in Florida. There are a million and a half throughout the country, a third of them in nursing facilities. While the field is growing much faster than other jobs, it pays poorly—an average of \$12.62 an hour nationwide.





# On the Job Injury

Standing at the bedside of a 180-pound male patient whom she needs to mobilize, Maria looks down the hall for the safe patient handling and mobility equipment the nursing home bought at great expense and fanfare, which is missing from its usual location. Rather than search out the equipment, Maria signals to her coworker Frances to help her in mobilizing the patient manually.

While lifting the patient, Maria sustains a painful bruise to her shoulder, and Frances severely injures her back. They both report the injuries to their supervisor and visit their respective doctors. Maria's doctor advises her not to work for several days to recover, while Frances' doctor puts her on work release for months, prescribing first a conservative treatment plan including painkillers and, eventually, surgery.

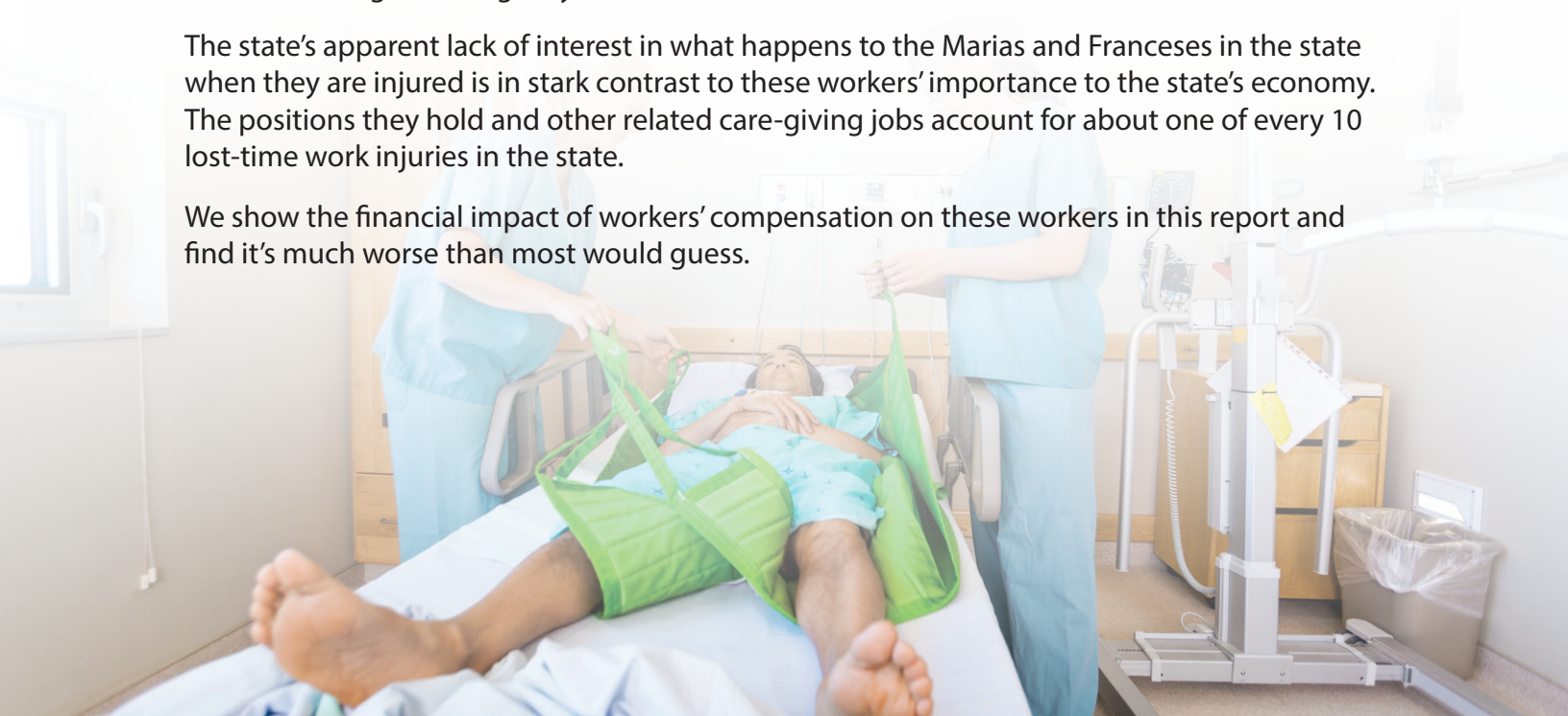
## Considering the Consequences

Meanwhile, the long-term care facility copes with the staffing shortage caused by the injuries, and its workers' compensation insurer pays wage replacement (indemnity) checks to the two workers and manages their medical care. But what financial impact do these injuries have on Maria and Frances' households? Their employer does not consider this question; in fact, neither the state agency overseeing workers' compensation (the Division of Workers' Compensation) nor the legislators who write the workers' comp laws know much about the income loss of Floridians who receive workers' comp.

In response to an inquiry from WorkCompCentral, a spokesperson for the Division wrote, "The Division has not received a request for analysis (studies) of what injured workers receive vs. their pre-injury take home pay, nor are we aware of any other request made of any other executive or legislative agency in Florida."

The state's apparent lack of interest in what happens to the Marias and Franceses in the state when they are injured is in stark contrast to these workers' importance to the state's economy. The positions they hold and other related care-giving jobs account for about one of every 10 lost-time work injuries in the state.

We show the financial impact of workers' compensation on these workers in this report and find it's much worse than most would guess.



# Maria's Brief Disability

Let's look at the effect Maria's brief disability has on her income.

Assuming Maria is paid the median wage for licensed vocational nurses in Florida—\$41,122 a year—pre-injury she earns \$19.77 an hour working full time and without overtime. As the head of her household and with one dependent, Maria takes home about \$650 a week, after income taxes and Social Security/Medicare deductions.

How much less will she take home while recovering? Using her story to generalize about brief work disability in Florida, rather than set a specific number of days for Maria's recovery, we instead spread the possible time out between three, six and 10 work days. According to this spread, Maria's probable indemnity payment comes to \$136! Yes, that is correct. To compensate her during her short-term disability, **Maria will only receive \$136, which is 81% (\$591) less than her usual pre-injury take-home pay.**

Table 1

Pre-injury Wage	Short-term Disability Compensation	Shortfall
\$727	\$136	\$591 (81%)

Note: Figures based on an average of 3, 6 and 10 work days.

From the injured worker's view, Florida has some of the most miserly laws for brief disability. The worker receives nothing for the first seven calendar days of disability. In other words, if Maria was injured Monday morning and returned to work the following Monday (eight days later), she would only receive \$75 for one day of disability in place of her usual \$650 take-home pay. And she will have to wait to receive this payment for a maximum of 21 days. In Florida, a worker must be out of work for more than 21 days in order to be paid for the first seven days of work missed due to injury.

In 1972, The National Commission on Workmen's Compensation Laws recommended standards for benefits and benefit delivery. Had Florida accepted the recommendation for a three-day waiting period, Maria's take-home pay loss would have been \$411 instead of \$591, as shown in Table 2.

Table 2

	Waiting Period	Short-term Disability Compensation (average of 3, 6, 10 work days)	Shortfall
Florida WC Laws	7 days	\$136	\$591
National Commission on Workmen's Compensation Laws 1972 recommendations	3 days	\$239	\$411

The multiple steps used to estimate Maria's loss of income from her injury are described in detail in "Meet Tim, the Uncompensated Worker," which includes this information for all states.

# Frances' Extended Disability

Let's see how Frances fares in her extended disability, which lasts for months. We'll pass by the first month, during which the laws were so detrimental to Maria, and find out what Frances receives in wage replacement for her second and later months of disability.

Pre-injury, at the median annual wage for the job in Florida—\$24,128—Frances earns \$11.60 an hour, and after taxes takes home \$386 a week. She is married without kids. While she's out on work disability, Frances' weekly wage replacement check comes to \$309, a 20%, or \$77, reduction from her usual pre-injury take-home pay, as shown in Table 3. This occurs because Florida's law sets wage replacement benefits at two-thirds of the gross pre-injury wage. The wage replacement is tax-free.

Table 3

Pre-injury Wage	Extended Disability Compensation	Shortfall
\$386/week	\$309	\$77 (20%)

The 1972 Commission recommended that wage replacement be set at 80% of gross wages less federal taxes and FICA deductions. Had Florida used this method, Frances' take-home pay would have been \$312.

Table 4

	Wage Replacement Benefits	Short-term Disability Compensation (average of 3, 6 & 10 lost work days)
Florida WC Laws	2/3 of gross pre-injury wages	\$309
National Commission on Workmen's Compensation Laws 1972 recommendations	80% of gross pre-injury wages	\$312

How many low-wage workers can afford an unforeseen and indefinite pay cut of 20%? If you were Frances, would you forego the necessary steps for recovery and return to work earlier than is safe or recommended by your doctor? Or would you decide to retain an attorney and stay on disability, hoping for a big payout to restore your finances and then some?



# Can They Afford the Pay Cuts?

To gauge how these two workers can absorb their loss—for Maria, \$591 at one time, and for Frances, \$77 a week for an indefinite amount of weeks—we need to consider the total income of their households (both have working partners) and the cost of living in their state.

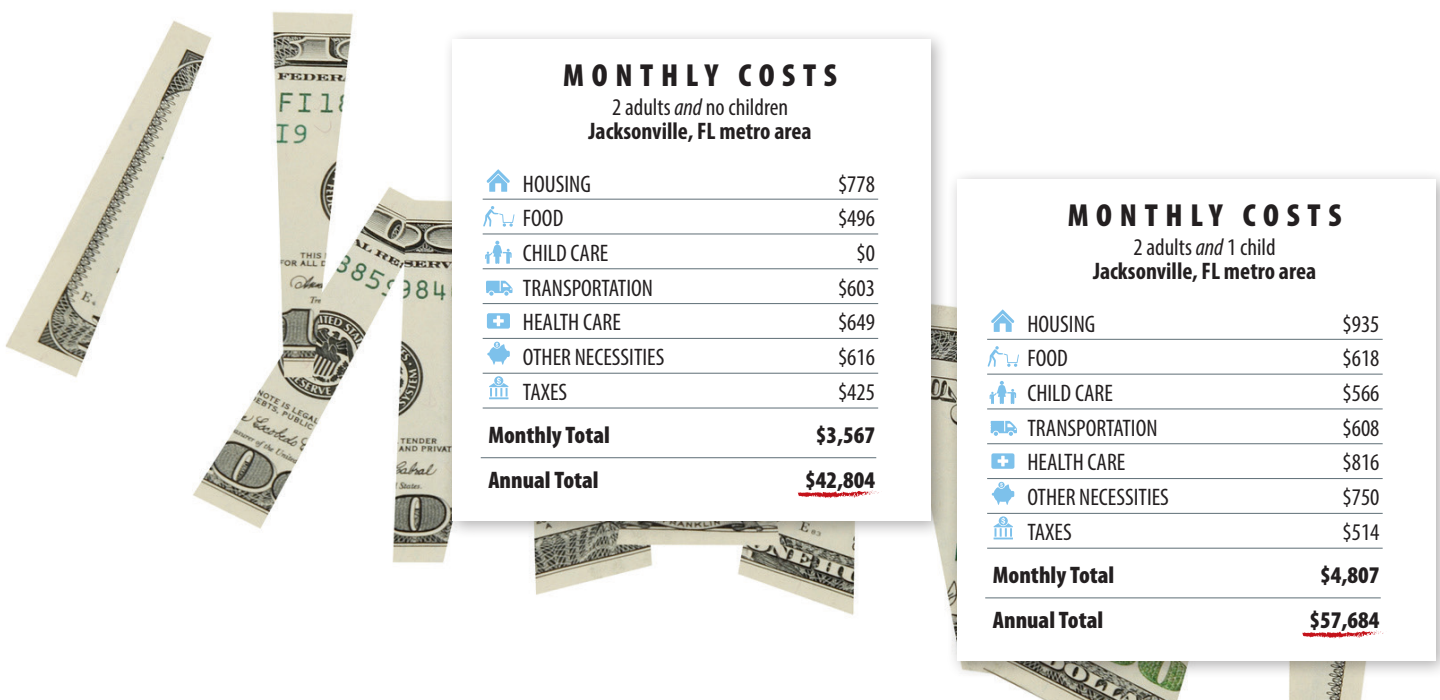
Let's assume that their partners work full time at the state's median wage, which is about \$15 an hour, bringing home after taxes \$528 a week.

We can find a basic living budget for Jacksonville at the website of the Economic Policy Institute, which estimates the bare bones cost of living for 612 locations throughout the country, adjusted by family size. These cost-of-living expenses are indeed bare bones estimates—no paying back of student loans, for instance, a consideration for many nurses, because obtaining a certificate as a nursing assistant could cost up to \$1,000 and Frances may aspire for a higher health care degree costing over \$10,000. Also not in the budget is saving for future emergencies and support of family, including remittances sent abroad.

Maria and her partner originally bring home \$650 and \$528 respectively, totaling \$1,178 a week. They have one child. The EPI's basic weekly budget (less taxes) for this household is \$989. They'd have to think carefully about how to absorb a one-time pay cut of \$591.

Pre-injury, Frances and her partner bring home \$373 and \$528 respectively, totaling \$901 a week. They do not have any dependents. Their basic weekly budget is \$724. A \$77 pay cut for Frances reduces the cushion between income and basic living expenses by a third. If Frances or her partner are saddled with student debt or coping at the time with some other financial upset, it's hard to feel confident that they will stay above water.

## Economic Policy Institute Basic Budget Calculator





# Florida Workers' Compensation Laws through the Years

2016

## Supreme Court declines

*Stahl v. Hialeah Hospital*, challenging 440 constitutionality



2014

## Constitutional Challenges in Supreme Court

- *Westphal v. City of St. Petersburg*, challenging the 104-week statutory cap on TD benefits
- *Castellanos v. Next Door Co.*, challenging the statutory attorney fee schedule

2013

## Senate Bill 662; Constitutional Challenges to WC Laws

- Miami-Dade Circuit Judge Jorge Cueto declared Florida's Workers' Compensation Statute, 440.01 et seq, unconstitutional
- "Workers' comp benefits after the statutory changes of 2003 no longer constitute a fair exchange for an employee's legal surrender of negligence damages against the employer"\*

2009

## House Bill 930

- Restores Caps On Workers' Attorney Fees

2003

## Senate Bill 50-A

- Doubled impairment benefits for injured workers
- Limited eligibility for permanent total disability benefits, capped at age 75
- Eliminated wage-loss benefits for workers who are permanently partially disabled
- Capped workers' attorney fees

# Stingy Florida

Why Florida is so stingy about benefits is unclear. The state doesn't appear to know how its rules actually impact its workers. A basic deduction is made by calculating two-thirds of a worker's average weekly wage, and benefits are not paid for the first seven calendar days, unless disability extends beyond 21 days.

"The 66 2/3% level is simply archaic, perhaps some would say that it borders on inhumane. An 80% level is more realistic in today's economy," commented an experienced workers' compensation professional (who wished to remain anonymous) in Florida.

As noted, the Florida Division of Workers' Compensation told WorkCompCentral that it does not consider the financial consequences of these indemnity benefit laws on injured Floridians. The pertinent provisions are in Florida Statutes Title XXXI, Sections 440.14, 440.15 and 440.12(2).

Historically, Florida has offered lower workers' compensation benefits to its injured workers than other states. The 2014 Oregon Workers' Compensation Premium Rate Ranking Summary placed Florida 2% below the median. Since 2003, legislative reforms have cut workers' compensation benefits in Florida. Regardless of how Floridians view workers' compensation benefits, the fact remains that minor, short-term work injuries in Florida can result in serious financial distress.





# Changes on the Horizon

The state's courts have been considering challenges that Florida's workers' comp system has been an inadequate alternative for injured workers since its major overhaul in 2003. In no other state have court challenges by injured workers progressed as far as they have in the Sunshine State.

On April 29, the Florida Supreme Court denied constitutional review of *Daniel Stahl v. Hialeah Hospital et al.*, which deals with partial disability benefits. Stahl was appealing an adverse lower court decision. According to WorkCompCentral press reports, Stahl, a nurse at a hospital in Hialeah, Florida, injured his back in 2003 performing the same task as Maria and Frances—moving a patient. He was given a 6% permanent impairment rating. His doctor restricted him to lifting no more than 10 pounds. He was awarded permanent partial disability benefits of \$5,472, and subjected to the new law's provision that he co-pay some of his medical expenses after reaching maximum medical improvement.

The court challenges in Florida are being viewed by many in workers' compensation as a wake-up call about the adequacy of injured worker benefits. It's time for the state to take a hard look at the laws that take so much money out of the pockets of Maria, Frances and the roughly 50,000 Floridians a year whose lives are disrupted by a lost-time work injury.



1990

## Major Changes in Benefits

- The Bureau Of Workers' Compensation Fraud established in the Department of Insurance
- The Bureau Of Safety within the Division Of Workers' Compensation upgraded
- The Workers' Compensation Drug Free Workplace Program added, recognizing the role that drugs and alcohol played in accidents on the job

1941

## AWW calculation changed to average earnings for 13 weeks pre-injury

- Reasonable" attorney's fees to injured worker attorney



1993

## Reform Act

- Emphasis on reemployment
- Wage loss replaced by impairment income and supplemental benefits
- Managed Health Care Arrangements (MCAs)
- Litigation and medical care a problem in Florida and nationally

1969

## The Governmental Reorganization Act Established

- Allowed for appeals of workers' compensation cases





1935

**Florida  
Legislature  
enacts  
Workmen's  
Compensation  
Act on May 23;  
Governor David  
Sholtz signed  
House Bill 29**

- Compensation paid at 50%, 55% and 60% of the employee's average weekly earnings, based on number of dependents
- \$4-\$18/wk  
Max Total: \$5,000  
Max Medical: \$500
- Average weekly wage calculated by dividing annual earnings by 52; no-fault system
- No compensation for the first 14 days
- Max 350 weeks



1938

**1st medical fee  
schedule was  
adopted**

Sources: \*<http://www.miamiherald.com/news/business/biz-monday/article2105795.html#storylink=cpy>  
<https://www.floridawc.com/workerscompensation/history/florida/>  
<http://www.myfloridacfo.com/Division/WC/InfoFaqs/history.htm>  
<http://www.myfloridacfo.com/Division/WC/pdf/SB50Asum.pdf>  
[http://archive.flsenate.gov/data/Publications/2002/Senate/reports/interim\\_reports/pdf/2002-117bilon.pdf](http://archive.flsenate.gov/data/Publications/2002/Senate/reports/interim_reports/pdf/2002-117bilon.pdf)  
Florida Office of Insurance  
Regulation (OIR), 2015 Workers' Compensation Annual Report

## Further Reading

Read more in our series about the effects of workers' compensation on injured workers and their households when we visit Kentucky, ground zero for prescribed opioid abuse, where we meet miners Chuck and Dale and see how they fare when they are injured on the job.



## About WorkCompCentral

Based in Camarillo, California, WorkCompCentral is the nation's only specialty media company producing daily news on the workers' compensation industry. With its own team of award-winning journalists located around the country, the niche outlet frequently breaks important news stories covering legal, medical, legislative/regulatory and business issues. The company also develops and maintains an extensive library of continuing educational content and can be reached at 805.484.0333 and via [www.workcompcentral.com](http://www.workcompcentral.com).

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[www.workcompcentral.com](http://www.workcompcentral.com)



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# Sources



## Demographic Data

The Bureau of Labor Statistics reports Occupational Employment and Wage Estimates under Occupational Employment Statistics for each state. Data from 2015 were used for Maria (licensed vocational nurse, 29-2061) and Frances (nursing assistant, 31-3014).

<http://www.bls.gov/oes/current/oesrcst.htm>



## Tax Computations

To find net take-home pay, a calculator at

<http://www.paycheckmanager.com>

[www.paycheckmanager.com](http://www.paycheckmanager.com) was used.



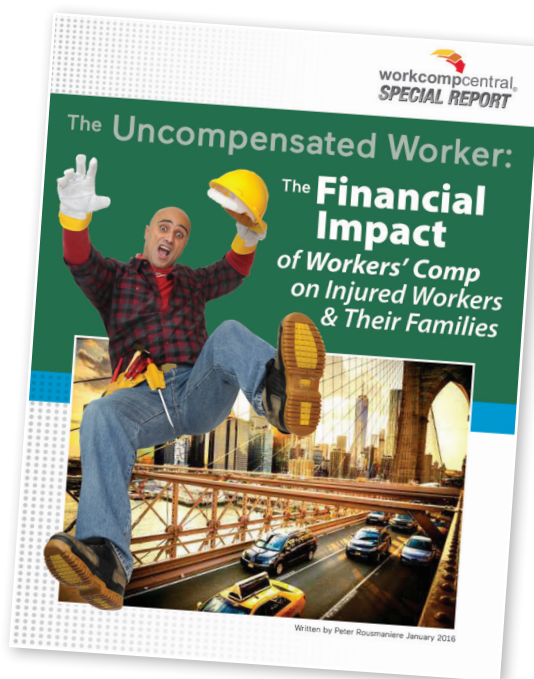
## Monthly Basic Budget

The Economic Policy Institute's Family Budget Calculator was used for Jacksonville, Florida.

<http://www.epi.org/resources/budget/>



For additional information  
on sources, see  
"The Uncompensated Worker"  
report, available at  
[www.WorkCompCentral.com](http://www.WorkCompCentral.com)



The data sources are described using Florida as an example.



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