



Florida: Survey Gives Bottom 10 Ranking to State Liability System¹

Florida ranks number 42 out of 50 states in survey of corporate lawyers

Here are some possible explanations:

The state has developed a reputation for having an unfair litigation climate.

- Miami/Dade County was cited in the Harris survey by respondents as one of the worst jurisdictions in the United States.

Excessive liability has made it difficult for doctors to practice in Florida.

- More than 3,000 Florida doctors reportedly do not carry malpractice insurance because of high premiums and increasing overhead costs. These doctors decide to “go bare” to discourage potentially litigious patients from seeking treatment with their practices.²

Florida law is pro-plaintiff, pro-lawsuit.

- Florida has one of the lowest standards for slip-and-fall claims in the country.
 - In 2001, the Florida Supreme Court eliminated the need for a plaintiff to show that a business owner knew or should have known of a hazardous condition, yet failed to address in a manner that would have avoided the plaintiff's fall.³ This rule requires a trial for even the weakest slip-and-fall allegations, increases settlements, and places a nearly impossible burden on Florida business owners and results in outlandish verdicts.
 - Trial court judges that grant summary judgment for business owners are routinely reversed by Florida's appellate courts.⁴ For this reason, business owners and their insurers feel compelled to settle every slip-and-fall claim, regardless of its merit.
 - On March 18, the Florida House passed a bill (HB 689) to restore the actual or constructive notice requirement in slip-and-fall cases by a vote of 110 to 2. The bill is now moving through the Florida Senate.
 - Florida law is in stark contrast to the laws of neighboring states, such as Alabama, Georgia, South Carolina, North Carolina, Mississippi, and Tennessee, which continue to limit liability to businesses that had actual or constructive notice of a danger, yet failed to promptly address it.

The Florida plaintiffs' bar is working vigorously to preserve the state's pro-lawsuit character.

- The Florida plaintiffs' bar is increasingly aggressive in its legislative efforts to roll back existing legal reforms and to block new, sound legislative enactments. The trial bar is working to expand joint liability and eliminate pre-dispute arbitration agreements.
- Plaintiffs' attorneys have opposed legislation sought by Florida Attorney General Bill McCollum (HB 437) that would provide limits and disclosure related to the practice of hiring outside counsel to represent the state on a contingency-fee basis. On March 18, the House passed the bill by a vote of 71 to 40.

Trial lawyer misconduct has further damaged Florida's reputation.

- The nation's latest Ponzi scheme involved Fort Lauderdale plaintiffs' lawyer Scott Rothstein who has been dubbed the "Bernie Madoff of South Florida." Rothstein sold investors a stake in collecting legal settlements, which, prosecutors alleged, did not exist. After bilking investors of \$1.2 billion, Rothstein pleaded guilty and faces a potential 100-year sentence.⁵
- Personal-injury lawyer Hank Adorno also faced charges of failing to distribute \$7 million of a class-action settlement to property owners in Miami after engineering the settlement in a manner that would distribute money to only seven people instead of all Miami taxpayers.⁶
- In Miami, federal authorities allege that a lawyer paid a hospital employee \$1,000 per month over two years to provide him with hundreds of confidential medical files for patients treated for slip and falls, car accidents, and other injuries.⁷

Florida's poor litigation climate may discourage businesses from bringing or expanding jobs in the state.

- With an unemployment rate of 11.8%, Florida should be concerned about creating new jobs and bringing new employers to the state.
- As Florida's leaders work to recover from the current economic downturn, they need to think about whether the policies they are considering will help create jobs or create lawsuits and expand liability against local businesses.

¹ Go to www.jobsnotlawsuits.com for a copy of "Ranking the States: Lawsuit Climate 2010 State Liability Systems Survey" conducted for the U.S. Chamber Institute for Legal Reform by Harris Interactive Inc.

² Frank J. Weinstock, *Going Bare Leave You Too Exposed*, 86 Med. Econ. 34 (Dec. 18, 2009), available at 2009 WLNR 26430407.

³ See *Owens v. Publix Supermarkets, Inc.*, 802 So. 2d 315 (Fla. 2001).

⁴ See, e.g., *Aaron v. Palatka Mall, L.L.C.*, 908 So. 2d 574 (Fla. Ct. App. 2005); *Gerald v. Eckerd Corp.*, 895 So. 2d 436 (Fla. Ct. App.

⁵ Weaver & Amy Sherman, *Scott Rothstein Pleads Guilty, Seeks Shorter Jail Term*, Miami Herald, Jan. 28, 2010, <http://www.miamiherald.com/2010/01/27/1449997/rothstein-seeks-shorter-jail-term.html>

⁶ See Billy Shields, *Hank Adorno Charged With Violating Nine Bar Rules*, Daily Bus. Rev., July 13, 2009, at http://www.dailybusinessreview.com/web_blog_stories/2009/July/adorno.html.

⁷ Jay Weaver, *Feds: Jackson Memorial Patients' Records Were Sold in Scheme*, Miami Herald, July 30, 2009, at <http://www.miamiherald.com/486/story/1165065.html>.