

**20.28 [FAILURE TO SECURE] [FRAUDULENT ACTS PERTAINING TO]
WORKER'S COMPENSATION INSURANCE**

§ 440.105 (4)(a)1., and (4)(a)3., Fla. Stat.

To prove the crime of [Failing to Secure] [Fraudulent Acts Pertaining to] Worker's Compensation Insurance, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) was an employer.**
- 2. (Defendant) knowingly**

Give as applicable.

- a. presented or caused to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with Florida Statute 440.38.**
- b. failed to secure worker's compensation insurance coverage when required to do so.**

If you find the defendant guilty of [Failure to Secure] [Fraudulent Acts Pertaining to] Worker's Compensation Insurance, you must determine whether the State proved beyond a reasonable doubt that the monetary value involved was:

- a. \$100,000 or more.**
- b. \$20,000 or more but less than \$100,000.**
- c. less than \$20,000**

"Knowingly" means that the defendant was aware of the fact and was not acting through ignorance, mistake, or accident.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Additional language from the definition of "employer" in § 440.02, Fla. Stat may need to be added.

"Employer" means all public and quasi-public corporations therein, and every person carrying on any employment. [If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer.]

The Court instructs you that Florida Statute 440.38 requires that 1) every employer must secure and pay for workmen's compensation insurance; and 2)

the employer must provide satisfactory proof to the Florida Self-Insurance Guaranty Association that it has the necessary financial strength to ensure timely payment of all current and future claims.

Lesser Included Offense

**[FAILURE TO SECURE] [FRAUDULENT ACTS PERTAINING TO] WORKER'S
COMPENSATION INSURANCE — § 440.105(4)(a)1., AND (4)(a)3.**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

This instruction will need additional language from Chapter 440 if the case involves independent contractors or sub-contractors or other exemptions.

This instruction was adopted on June 27, 2025.