

ASSEMBLY, No. 5353

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 30, 2023

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Increases attorney fee in workers' compensation cases.

CURRENT VERSION OF TEXT

As introduced.

WITHDRAWN



1 AN ACT concerning contingency fees in workers' compensation
2 cases and amending R.S.34:15-64.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.34:15-64 is amended to read as follows:

8 34:15-64. a. The commissioner, director and the judges of
9 compensation may make such rules and regulations for the conduct
10 of the hearing not inconsistent with the provisions of this chapter as
11 may, in the commissioner's judgment, be necessary. The official
12 conducting any hearing under this chapter **may** shall allow to the
13 party in whose favor judgment is entered, costs of witness fees and
14 **an attorney fee**, not exceeding 20% **of 25%** of the
15 judgment, order for payment of medical and temporary disability
16 benefits on motion, or order approving settlement of any kind; and a
17 reasonable fee not exceeding \$400 for any one witness, except that
18 the following fees may be allowed for a medical witness:

19 (1) (a) A fee of not more than \$600 paid to an evaluating
20 physician for an opinion regarding the need for medical treatment or
21 for an estimation of permanent disability, if the physician provides
22 the opinion or estimation in a written report; and

23 (b) An additional fee of not more than \$400 paid to the evaluating
24 physician who makes a court appearance to give testimony; or

25 (2) (a) A fee of not more than \$450 paid to a treating physician
26 for the preparation and submission of a report including the entire
27 record of treatment, medical history, opinions regarding diagnosis,
28 prognosis, causal relationships between the treated condition and the
29 claim, the claimant's ability to return to work with or without
30 restrictions, what, if any, restrictions are appropriate, and the
31 anticipated date of return to work, and any recommendations for
32 further treatment; and

33 (b) (i) An additional fee of not more than \$300 per hour, with the
34 total amount not to exceed \$2,500, paid to the treating physician who
35 gives testimony concerning causal relationship, ability to work or the
36 need for treatment; or

37 (ii) An additional fee of not more than \$300 per hour, with the
38 total amount not to exceed \$1,500, paid to the treating physician who
39 gives a deposition concerning causal relationship, ability to work or
40 the need for treatment.

41 b. (1) No fee for an evaluating physician pursuant to this section
42 shall be contingent on whether a judgment or award is or is not made
43 in favor of the petitioner.

44 (2) No evaluating or treating physician shall charge any fee for a
45 report, testimony or deposition in excess of the amount permitted
46 pursuant to the provisions of this section.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. A fee shall be allowed at the discretion of the judge of
2 compensation when, in the official's judgment, the services of an
3 attorney and medical witnesses are necessary for the proper
4 presentation of the case. In determining a reasonable fee for medical
5 witnesses, the official shall consider (1) the time, personnel, and
6 other cost factors required to conduct the examination; (2) the extent,
7 adequacy and completeness of the medical evaluation; (3) the
8 objective measurement of bodily function and the avoidance of the
9 use of subjective complaints; and (4) the necessity of a court
10 appearance of the medical witness. When, however, at a reasonable
11 time, prior to any hearing compensation has been offered and the
12 amount then due has been tendered in good faith or paid within 26
13 weeks from the date of the notification to the employer of an accident
14 or an occupational disease or the employee's final active medical
15 treatment or within 26 weeks after the employee's return to work
16 whichever is later or within 26 weeks after employer's notification of
17 the employee's death, the reasonable allowance for attorney fee shall
18 be based upon the amount of compensation, theretofore offered,
19 tendered in good faith or paid after the establishment of an attorney-
20 client relationship pursuant to a written agreement, and the amount
21 of the judgment or award in excess of the amount of compensation,
22 theretofore offered. When the amount of the judgment is less than
23 \$200, an attorney fee may be allowed not in excess of \$50.

24 d. All counsel fees of claimants' attorneys for services
25 performed in matters before the Division of Workers' Compensation
26 shall be 25% of the value of the money judgment, order for payment
27 of medical and temporary disability benefits on motion, or order
28 approving settlement of any kind, whether or not allowed as part of
29 a judgment, and shall be first approved by the judge of compensation
30 before payment. The Court may exercise discretion as to the
31 allocation of payment of counsel fees between claimant and
32 employer. Whenever a judgment or award is made in favor of a
33 petitioner, the judges of compensation or referees of formal hearings
34 shall direct amounts to be deducted for the petitioner's expenses and
35 to be paid directly to the persons entitled to the same, the remainder
36 to be paid directly to the petitioner.

37 (cf: P.L.2018, c.105, s.1)

38

39 2. This act shall take effect immediately and shall apply to all
40 pending traumatic accident claims or occupational disease or injury
41 cases which have not yet been adjudicated by a workers'
42 compensation judge or approved for settlement under R.S.34:15-22
43 on or after the date of enactment of P.L. , c. (pending before the
44 Legislature as this bill).

STATEMENT

This bill revises the workers' compensation law to increase counsel fee awards to a prevailing party in workers' compensation matters from a cap of 20 percent to a nondiscretionary award of 25 percent, and it expands the application of the fee to orders for payment of medical and temporary disability benefits on motion and orders approving settlement of any kind. This legislation is intended to address the ruling in the unpublished case of Garzon v. Morris County Golf Club, App. Div. Docket #A-1100-21, concerning the basis for the award of counsel fees in the workers' compensation system.

Attorneys for injured workers are compensated on a contingency fee basis, to encourage the vindication of the rights of injured workers to medical treatment, temporary total disability, permanent disability, and dependency benefits under a beneficent and remedial system. The cost of denying these benefits to injured workers poorly situated to paying hourly counsel fees is to be borne by the employer when appropriate and to the extent appropriate, as determined by a workers' compensation judge.

According to the sponsor, the purpose of this bill is to incentivize attorneys to zealously represent injured workers and their families in every case compensable under the workers' compensation law, and to create a disincentive for employers to deny or delay medical, temporary, and permanency benefits without legal defense or cause. Per the sponsor, since the original contingency cap of 20 percent was passed by the Legislature, attorneys for injured workers have been given additional duties by changes in the statutory and regulatory structures on both State and federal levels. The availability of additional attorney fees takes into account increased duties of attorneys for injured workers. It is the sponsor's position that a successful litigant should receive 25 percent as the counsel fee for securing these essential benefits for the injured worker if the court determines the efforts of counsel resulted in the payment of these benefits.