

**ASSEMBLY, No. 5659**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED JUNE 26, 2023

**Sponsored by:**

**Assemblyman ANTHONY S. VERRELLI**

**District 15 (Hunterdon and Mercer)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

Establishes 21st Century Injured Workers' Access to Justice Act.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/30/2023)**

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 allow to the party in  
13 whose favor judgment is entered, costs of witness fees and a  
14 reasonable attorney fee, not exceeding **【20%】** 25 percent of the  
15 judgment; and a reasonable fee not exceeding \$400 for any one  
16 witness, except that the following fees may be allowed for a medical  
17 witness:

18 (1) (a) A fee of not more than **【\$600】** \$1,000 paid to an  
19 evaluating physician for an opinion regarding the need for medical  
20 treatment or for an estimation of permanent disability, if the  
21 physician provides the opinion or estimation in a written report; and

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

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

4 (3) A psychologist, nurse practitioner, or licensed clinical social  
5 worker who provides psychological treatment may be paid a fee, as  
6 permitted in accordance with the provisions of this section, for a  
7 report or testimony concerning that provider's course of treatment of  
8 the injured worker in that provider's role as a provider of treatment.

9 c. A fee shall be allowed at the discretion of the judge of  
10 compensation when, in the official's judgment, the services of an  
11 attorney and medical witnesses are necessary for the proper  
12 presentation of the case. In determining a reasonable fee for medical  
13 witnesses, the official shall consider (1) the time, personnel, and  
14 other cost factors required to conduct the examination; (2) the extent,  
15 adequacy and completeness of the medical evaluation; (3) the  
16 objective measurement of bodily function and the avoidance of the  
17 use of subjective complaints; and (4) the necessity of a court  
18 appearance of the medical witness. When, however, at a reasonable  
19 time, prior to any hearing compensation has been offered and the  
20 amount then due has been tendered in good faith or paid within 26  
21 weeks from the date of the notification to the employer of an accident  
22 or an occupational disease or the employee's final active medical  
23 treatment or within 26 weeks after the employee's return to work  
24 whichever is later or within 26 weeks after employer's notification of  
25 the employee's death, the reasonable allowance for an attorney fee  
26 shall be based upon the amount of compensation, theretofore offered,  
27 tendered in good faith or paid after the establishment of an attorney-  
28 client relationship pursuant to a written agreement, and the amount  
29 of the judgment or award in excess of the amount of compensation,  
30 theretofore offered. When the amount of the judgment is less than  
31 \$200, an attorney fee may be allowed not in excess of \$50.

32 d. All counsel fees of claimants' attorneys for services  
33 performed in matters before the Division of Workers' Compensation,  
34 whether or not allowed as part of a judgment, shall be first approved  
35 by the judge of compensation before payment. The basis for the  
36 award of a contingency fee, with a maximum of 25 percent of the  
37 petitioner's settlement, order on motion, or judgment shall be the  
38 value of the money judgment awarded to the petitioner, and the judge  
39 of workers' compensation shall not consider among the factors in  
40 determining reasonableness of a fee the number of hours expended  
41 by counsel or counsel's hourly rate, the representation having been  
42 secured on the basis of contingency fee. No awarded counsel fee  
43 shall be allocated by a judge of workers' compensation or referee of  
44 formal hearing against the petitioner's recovery for medical  
45 treatment or temporary total disability benefits secured by way of  
46 motion or plenary trial. This section shall not prevent a judge of  
47 workers' compensation or referee of formal hearing from considering  
48 hourly rate and hours expended when awarding a counsel fee

1 pursuant to section 1 of P.L.2008, c.93 (C.34:15-28.2) or section 1 of  
2 P.L.1998, c.74 (C.34:15-57.4). Cases resolved pursuant to section 8  
3 of P.L.1979, c.282 (C.34:15-20) shall also carry a contingency fee  
4 not exceeding 25 percent, subject to the discretion of the judge of  
5 workers' compensation, with no consideration to be given to hours  
6 expended or hourly rate, and with the award of fees and costs to be  
7 allocated against the petitioner, unless the parties stipulate otherwise,  
8 and the court approves that arrangement.

9 Whenever a judgment or award is made in favor of a petitioner,  
10 the judges of compensation or referees of formal hearings shall direct  
11 amounts to be deducted for the petitioner's expenses and to be paid  
12 directly to the persons entitled to the same, the remainder to be paid  
13 directly to the petitioner.

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

15  
16 2. This act shall take effect immediately and shall apply to any  
17 pending contingency fee determinations by a judge of workers'  
18 compensation on or after the date of enactment.

## 21 STATEMENT

22  
23 This bill establishes the 21st Century Injured Workers' Access to  
24 Justice Act. This bill revises the workers' compensation law to revise  
25 the cap on contingency fees to a prevailing party in workers'  
26 compensation matters from 20 percent to 25 percent, and it expands  
27 the application of the fee to orders for payment of medical and  
28 temporary disability benefits on motion and orders approving  
29 settlement of any kind.

30 The bill provides that no awarded counsel fee will be allocated by  
31 a judge of workers' compensation against the petitioner's recovery  
32 for medical treatment or temporary total disability benefits secured  
33 by way of motion or plenary trial. The bill will not prevent a judge  
34 of workers' compensation to consider hourly rate and hours expended  
35 when awarding a counsel fee in accordance with existing law. Cases  
36 resolved pursuant to section 8 of P.L.1979, c.282 (C.34:15-20) will  
37 also carry a contingency fee of not exceeding 25 percent, subject to  
38 the discretion of the judge of workers' compensation.

39 The bill sets the maximum fees of evaluating physicians for  
40 claimants for the written reports at \$1,000. The maximum fee of  
41 \$1,000 represents an increase of \$400 over the current maximum of  
42 \$600, in the case of a claimant's evaluating physician.

43 The bill provides that a psychologist, nurse practitioner, or  
44 licensed clinical social worker who provides psychological treatment  
45 may be paid a fee for a report or testimony concerning that provider's  
46 course of treatment of the injured worker in that provider's role as a  
47 provider of treatment as permitted by law.

1 Per the sponsor, the bill is intended to address the ruling in the  
2 unpublished case of Garzon v. Morris County Golf Club, App. Div.  
3 Docket #A-1100-21, concerning the basis for the award of counsel  
4 fees in the workers' compensation system.

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

13 Per the sponsor, since the original contingency cap of 20 percent  
14 was passed by the Legislature, attorneys for injured workers have  
15 been given additional duties by changes in the statutory and  
16 regulatory structures on both State and federal levels. The bill's  
17 revision of the contingency fee cap takes into account increased  
18 duties of attorneys for injured workers. It is the sponsor's position  
19 that a prevailing party should receive up to 25 percent as the counsel  
20 fee for securing these essential benefits for the injured worker if the  
21 court determines the efforts of counsel resulted in the payment of  
22 these benefits.