

[First Reprint]

ASSEMBLY, No. 5659

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 26, 2023

Sponsored by:

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

Assemblywomen Quijano and Speight

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on November 30, 2023, with amendments.



(Sponsorship Updated As Of: 12/7/2023)

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 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
17 medical 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
29 the 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
34 the total amount not to exceed \$2,500, paid to the treating physician
35 who gives testimony concerning causal relationship, ability to work
36 or the 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
39 who gives a deposition concerning causal relationship, ability to
40 work or the need for treatment.

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted November 30, 2023.

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
8 of the injured worker in that provider's role as a provider of
9 treatment.

10 c. A fee shall be allowed at the discretion of the judge of
11 compensation when, in the official's judgment, the services of an
12 attorney and medical witnesses are necessary for the proper
13 presentation of the case. In determining a reasonable fee for
14 medical witnesses, the official shall consider (1) the time,
15 personnel, and other cost factors required to conduct the
16 examination; (2) the extent, adequacy and completeness of the
17 medical evaluation; (3) the objective measurement of bodily
18 function and the avoidance of the use of subjective complaints; and
19 (4) the necessity of a court appearance of the medical witness.
20 When, however, at a reasonable time, prior to any hearing
21 compensation has been offered and the amount then due has been
22 tendered in good faith or paid within 26 weeks from the date of the
23 notification to the employer of an accident or an occupational
24 disease or the employee's final active medical treatment or within
25 26 weeks after the employee's return to work whichever is later or
26 within 26 weeks after employer's notification of the employee's
27 death, the reasonable allowance for an attorney fee shall be based
28 upon the amount of compensation, theretofore offered, tendered in
29 good faith or paid after the establishment of an attorney-client
30 relationship pursuant to a written agreement, and the amount of the
31 judgment or award in excess of the amount of compensation,
32 theretofore offered. When the amount of the judgment is less than
33 \$200, an attorney fee may be allowed not in excess of \$50.

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

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

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

17 (cf: P.L.2018, c.105, s.1)】¹

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19 ¹1. R.S.34:15-64 is amended to read as follows:

20 34:15-64. a. The commissioner, director and the judges of
21 compensation may make such rules and regulations for the conduct of
22 the hearing not inconsistent with the provisions of this chapter as may,
23 in the commissioner's judgment, be necessary. The official conducting
24 any hearing under this chapter may allow to the party in whose favor
25 judgment is entered, costs of witness fees and a reasonable attorney
26 fee, not exceeding ~~【20%】~~ 25 percent of the judgment; and a
27 reasonable fee not exceeding \$400 for any one witness, except that the
28 following fees may be allowed for a medical witness:

29 (1) (a) A fee of not more than \$1,000 paid to an evaluating
30 physician for an opinion regarding the need for medical treatment or
31 for an estimation of permanent disability, if the physician provides the
32 opinion or estimation in a written report; and

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

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

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

46 (ii) An additional fee of not more than \$300 per hour, with the total
47 amount not to exceed \$1,500, paid to the treating physician who gives

1 a deposition concerning causal relationship, ability to work or the need
2 for treatment.

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

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

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

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

37 d. All counsel fees of claimants' attorneys for services performed
38 in matters before the Division of Workers' Compensation, whether or
39 not allowed as part of a judgment, shall be first approved by the judge
40 of compensation before payment. The basis for the award of a
41 contingency fee, with a maximum of 25 percent of the petitioner's
42 settlement, order on motion, or judgment shall be the value of the
43 money judgment awarded to the petitioner, and the judge of workers'
44 compensation shall not consider among the factors in determining
45 reasonableness of a fee the number of hours expended by counsel or
46 counsel's hourly rate, the representation having been secured on the
47 basis of contingency fee. No awarded counsel fee shall be allocated
48 by a judge of workers' compensation or referee of formal hearing

1 against the petitioner's recovery for medical treatment or temporary
2 total disability benefits secured by way of motion or plenary trial.
3 This section shall not prevent a judge of workers' compensation or
4 referee of formal hearing from considering hourly rate and hours
5 expended when awarding a counsel fee pursuant to section 1 of
6 P.L.2008, c.93 (C.34:15-28.2) or section 1 of P.L.1998, c.74 (C.34:15-
7 57.4). Cases resolved pursuant to section 8 of P.L.1979, c.282
8 (C.34:15-20) shall also carry a contingency fee not exceeding 25
9 percent, subject to the discretion of the judge of workers'
10 compensation, with no consideration to be given to hours expended or
11 hourly rate, and with the award of fees and costs to be allocated
12 against the petitioner, unless the parties stipulate otherwise, and the
13 court approves that arrangement.

14 Whenever a judgment or award is made in favor of a petitioner, the
15 judges of compensation or referees of formal hearings shall direct
16 amounts to be deducted for the petitioner's expenses and to be paid
17 directly to the persons entitled to the same, the remainder to be paid
18 directly to the petitioner.¹

19 (cf: P.L.2023, c.114, s.1)

20

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