

SENATE, No. 3818

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MAY 11, 2023

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Increases attorney fee in workers' compensation cases.

CURRENT VERSION OF TEXT

As introduced.



S3818 LAGANA

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

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

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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 **[a reasonable]** 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
21 or for an estimation of permanent disability, if the physician
22 provides the opinion or estimation in a written report; and

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

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

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

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

42 b. (1) No fee for an evaluating physician pursuant to this section
43 shall be contingent on whether a judgment or award is or is not
44 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.

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

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

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

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

STATEMENT

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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.