

SENATE, No. 4059

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED NOVEMBER 27, 2023

Sponsored by:

Senator JOSEPH A. LAGANA
District 38 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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 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 the
34 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 section
42 shall be contingent on whether a judgment or award is or is not
43 made 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 (3) A psychologist, nurse practitioner, or licensed clinical social
2 worker who provides psychological treatment may be paid a fee, as
3 permitted in accordance with the provisions of this section, for a
4 report or testimony concerning that provider's course of treatment
5 of the injured worker in that provider's role as a provider of
6 treatment.

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

31 d. All counsel fees of claimants' attorneys for services
32 performed in matters before the Division of Workers'
33 Compensation, whether or not allowed as part of a judgment, shall
34 be first approved by the judge of compensation before payment.
35 The basis for the award of a contingency fee, with a maximum of 25
36 percent of the petitioner's settlement, order on motion, or judgment
37 shall be the value of the money judgment awarded to the petitioner,
38 and the judge of workers' compensation shall not consider among
39 the factors in determining reasonableness of a fee the number of
40 hours expended by counsel or counsel's hourly rate, the
41 representation having been secured on the basis of contingency fee.
42 No awarded counsel fee shall be allocated by a judge of workers'
43 compensation or referee of formal hearing against the petitioner's
44 recovery for medical treatment or temporary total disability benefits
45 secured by way of motion or plenary trial. This section shall not
46 prevent a judge of workers' compensation or referee of formal
47 hearing from considering hourly rate and hours expended when
48 awarding a counsel fee pursuant to section 1 of P.L.2008, c.93
49 (C.34:15-28.2) or section 1 of P.L.1998, c.74 (C.34:15-57.4). Cases

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

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

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

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

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STATEMENT

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

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

48 Per the sponsor, the bill is intended to address the ruling in the
49 unpublished case of Garzon v. Morris County Golf Club, App. Div.

1 Docket #A-1100-21, concerning the basis for the award of counsel
2 fees in the workers' compensation system.

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

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