

# ASSEMBLY, No. 3403

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 16, 2014

**Sponsored by:**

**Assemblyman DAVID P. RIBLE**

**District 30 (Monmouth and Ocean)**

**Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

Concerns attorney fees for workers' compensation awards.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 9/23/2014)

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

3

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% of the judgment; and a  
15 reasonable fee not exceeding \$400 for any one witness, except that  
16 the following fees may be allowed for a medical witness:

17 (1) (a) A fee of not more than \$400 paid to an evaluating  
18 physician for an opinion regarding the need for medical treatment  
19 or for an estimation of permanent disability, if the physician  
20 provides the opinion or estimation in a written report; and

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

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

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

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

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

43 (2) No evaluating or treating physician shall charge any fee for a  
44 report, testimony or deposition in excess of the amount permitted  
45 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  
7 extent, adequacy and completeness of the medical evaluation; (3)  
8 the objective measurement of bodily function and the avoidance of  
9 the 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  
14 accident or an occupational disease or the employee's final active  
15 medical treatment or within 26 weeks after the employee's return to  
16 work whichever is later or within 26 weeks after employer's  
17 notification of the employee's death, the reasonable allowance for  
18 attorney fee shall be based upon **only that part of the judgment or**  
19 **award in excess of** the amount of compensation, theretofore  
20 offered, tendered in good faith or paid and the amount of the  
21 judgment or award in excess of the amount of compensation,  
22 theretofore offered. When the amount of the judgment**,** or when  
23 that part of the judgment or award in excess of compensation,  
24 offered, tendered in good faith or paid as aforesaid,**]** is less than  
25 \$200, an attorney fee may be allowed not in excess of \$50.

26 d. All counsel fees of claimants' attorneys for services  
27 performed in matters before the Division of Workers'  
28 Compensation, whether or not allowed as part of a judgment, shall  
29 be first approved by the judge of compensation before payment.  
30 Whenever a judgment or award is made in favor of a petitioner, the  
31 judges of compensation or referees of formal hearings shall direct  
32 amounts to be deducted for the petitioner's expenses and to be paid  
33 directly to the persons entitled to the same, the remainder to be paid  
34 directly to the petitioner.

35 (cf: P.L.2002, c.112, s.1)

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37 2. This act shall take effect immediately.

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#### STATEMENT

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42 This bill requires that in cases in which a workers' compensation  
43 petitioner has received compensation from an insurance company  
44 prior to any judgment or award, the reasonable allowance for  
45 attorney fees will be based upon the sum of the amount of  
46 compensation already received by the petitioner, and the amount of  
47 the judgment or award in excess of the amount of compensation  
48 already received by the petitioner. Currently, in cases in which a

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1 petitioner has received compensation prior to a judgment or award,  
2 a reasonable attorney fee is based upon only that part of the  
3 judgment or award that is in excess of the amount of compensation  
4 already received by the petitioner.