

ASSEMBLY, No. 2510

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Co-Sponsored by:

Assemblywoman Chaparro

SYNOPSIS

Concerns attorney fees for workers' compensation awards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/8/2018)

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 \$600 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
33 the 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
5 medical witnesses, the official shall consider (1) the time,
6 personnel, and other cost factors required to conduct the
7 examination; (2) the extent, adequacy and completeness of the
8 medical evaluation; (3) the objective measurement of bodily
9 function and the avoidance of the use of subjective complaints; and
10 (4) the necessity of a court appearance of the medical witness.
11 When, however, at a reasonable time, prior to any hearing
12 compensation has been offered and the amount then due has been
13 tendered in good faith or paid within 26 weeks from the date of the
14 notification to the employer of an accident or an occupational
15 disease or the employee's final active medical treatment or within
16 26 weeks after the employee's return to work whichever is later or
17 within 26 weeks after employer's notification of the employee's
18 death, the reasonable allowance for attorney fee shall be based upon
19 **【only that part of the judgment or award in excess of】** the amount
20 of compensation, theretofore offered, tendered in good faith or paid
21 after the establishment of an attorney client relationship pursuant to
22 a written agreement, and the amount of the judgment or award in
23 excess of the amount of compensation, theretofore offered. When
24 the amount of the judgment**【**, or when that part of the judgment or
25 award in excess of compensation, offered, tendered in good faith or
26 paid as aforesaid,**】** is less than \$200, an attorney fee may be
27 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'
30 Compensation, whether or not allowed as part of a judgment, shall
31 be first approved by the judge of compensation before payment.
32 Whenever a judgment or award is made in favor of a petitioner, the
33 judges of compensation or referees of formal hearings shall direct
34 amounts to be deducted for the petitioner's expenses and to be paid
35 directly to the persons entitled to the same, the remainder to be paid
36 directly to the petitioner.
37 (cf: P.L.2015, c.216, s.1)

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39 2. This act shall take effect immediately.

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STATEMENT

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

1 after the establishment of an attorney-client relationship pursuant to
2 a written agreement, and the amount of the judgment or award in
3 excess of the amount of compensation already received by the
4 petitioner. Currently, in cases in which a petitioner has received
5 compensation prior to a judgment or award, a reasonable attorney
6 fee is based upon only that part of the judgment or award that is in
7 excess of the amount of compensation already received by the
8 petitioner.