

SENATE, No. 2446

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED DECEMBER 6, 2010

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

SYNOPSIS

Concerns attorney fees for workers' compensation awards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/29/2011)

1 AN ACT concerning workers' compensation and amending
2 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% 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.