

1 HOUSE BILL 455

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Pamelya Herndon

5
6
7
8
9
10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; INCREASING THE AMOUNT OF
12 MONEY THAT AN EMPLOYER SHALL ADVANCE FOR DISCOVERY; INCREASING
13 CERTAIN LIMITS ON ATTORNEY FEES; CHANGING PROCEDURES FOR THE
14 PROVISION OF ADDITIONAL DISCRETIONARY ATTORNEY FEES; REMOVING A
15 PENALTY.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 52-1-54 NMSA 1978 (being Laws 1987,
19 Chapter 235, Section 24, as amended) is amended to read:

20 "52-1-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY
21 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY
22 COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

23 A. It is unlawful for any person to receive or
24 agree to receive any fees or payment directly or indirectly in
25 connection with any claim for compensation under the Workers'

.224595.1

underscoring material = new
~~[bracketed material] = delete~~

underscoring material = new
~~[bracketed material]~~ = delete

1 Compensation Act except as provided in this section.

2 B. In all cases where the jurisdiction of the
3 workers' compensation administration is invoked to approve a
4 settlement of a compensation claim under the Workers'
5 Compensation Act, the director or workers' compensation judge,
6 unless the claimant is represented by an attorney, may in the
7 director's or judge's discretion appoint an attorney to aid the
8 workers' compensation judge in determining whether the
9 settlement should be approved and, in the event of an
10 appointment, a reasonable fee for the services of the attorney
11 shall be fixed by the workers' compensation judge, subject to
12 the limitation of Subsection I of this section.

13 C. In all cases where the jurisdiction of the
14 workers' compensation administration is invoked to approve a
15 settlement of a compensation claim under the Workers'
16 Compensation Act and the claimant is represented by an
17 attorney, the total amount paid or to be paid by the employer
18 in settlement of the claim shall be stated in the settlement
19 papers. The workers' compensation judge shall determine and
20 fix a reasonable fee for the claimant's attorney, taking into
21 account any sum previously paid, and the fee fixed by the
22 workers' compensation judge shall be the limit of the fee
23 received or to be received by the attorney in connection with
24 the claim, subject to the limitation of Subsection I of this
25 section.

.224595.1

underscoring material = new
~~[bracketed material]~~ = delete

1 D. The cost of discovery shall be borne by the
2 party who requests it. If, however, the claimant requests any
3 discovery, the employer shall advance the cost of paying for
4 discovery up to a limit of [~~three thousand dollars (\$3,000)~~]
5 ten thousand dollars (\$10,000). If the claimant substantially
6 prevails on the claim, as determined by a workers' compensation
7 judge, any discovery cost advanced by the employer shall be
8 paid by that employer. If the claimant does not substantially
9 prevail on the claim, as determined by a workers' compensation
10 judge, the employer shall be reimbursed for discovery costs
11 advanced according to a schedule for reimbursement approved by
12 a workers' compensation judge.

13 E. In all cases where compensation to which any
14 person is entitled under the provisions of the Workers'
15 Compensation Act is refused and the claimant thereafter
16 collects compensation through proceedings before the workers'
17 compensation administration or courts in an amount in excess of
18 the amount offered in writing by an employer five business days
19 or more prior to the informal hearing before the
20 administration, the compensation to be paid the attorney for
21 the claimant shall be fixed by the workers' compensation judge
22 hearing the claim or the courts upon appeal in the amount the
23 workers' compensation judge or courts deem reasonable and
24 proper, subject to the limitation of Subsection I of this
25 section. In determining and fixing a reasonable fee, the

.224595.1

1 workers' compensation judge or courts shall take into
2 consideration:

3 (1) the sum, if any, offered by the employer:
4 (a) before the worker's attorney was
5 employed;

6 (b) after the attorney's employment but
7 before proceedings were commenced; and

8 (c) in writing five business days or
9 more prior to the informal hearing;

10 (2) the present value of the award made in the
11 worker's favor; and

12 (3) any failure of a party to participate in a
13 good-faith manner in informal claim resolution methods adopted
14 by the director.

15 F. After a recommended resolution has been issued
16 and rejected, but more than ten days before a trial begins, the
17 employer or claimant may serve upon the opposing party an offer
18 to allow a compensation order to be taken against the employer
19 or claimant for the money or property or to the effect
20 specified in the offer, with costs then accrued, subject to the
21 following:

22 (1) if, within ten days after the service of
23 the offer, the opposing party serves written notice that the
24 offer is accepted, either party may then file the offer and
25 notice of acceptance together with proof of service thereof,

.224595.1

1 and thereupon that compensation order may be entered as the
2 workers' compensation judge may direct. An offer not accepted
3 shall be deemed withdrawn, and evidence thereof is not
4 admissible except in a proceeding to determine costs. If the
5 compensation order finally obtained by the party is not more
6 favorable than the offer, that party shall pay the costs
7 incurred by the opposing party after the making of the offer.
8 The fact that an offer has been made but not accepted does not
9 preclude a subsequent offer;

10 (2) when the liability of one party to another
11 has been determined by a compensation order, but the amount or
12 extent of the liability remains to be determined by further
13 proceedings, the party adjudged liable may make an offer, which
14 shall have the same effect as an offer made before trial if it
15 is served within a reasonable time not less than ten days prior
16 to the commencement of hearings to determine the amount or
17 extent of liability;

18 (3) if the employer's offer was greater than
19 the amount awarded by the compensation order, the employer
20 shall not be liable for the employer's fifty percent share of
21 the attorney fees to be paid the worker's attorney and the
22 worker shall pay one hundred percent of the attorney fees due
23 to the worker's attorney; and

24 (4) if the worker's offer was less than the
25 amount awarded by the compensation order, the employer shall

underscoring material = new
~~[bracketed material] = delete~~

1 pay one hundred percent of the attorney fees to be paid the
2 worker's attorney, and the worker shall be relieved from any
3 responsibility for paying any portion of the worker's attorney
4 fees.

5 G. In all actions arising under the provisions of
6 Section 52-1-56 NMSA 1978 where the jurisdiction of the
7 workers' compensation administration is invoked to determine
8 the question whether the claimant's disability has increased or
9 diminished and the claimant is represented by an attorney, the
10 workers' compensation judge or courts upon appeal shall
11 determine and fix a reasonable fee for the services of the
12 claimant's attorney only if the claimant is successful in
13 establishing that the claimant's disability has increased or if
14 the employer is unsuccessful in establishing that the
15 claimant's disability has diminished. The fee when fixed by
16 the workers' compensation judge or courts upon appeal shall be
17 the limit of the fee received or to be received by the attorney
18 for services in the action, subject to the limitation of
19 Subsection I of this section.

20 H. In determining reasonable attorney fees for a
21 claimant, the workers' compensation judge shall consider only
22 those benefits to the worker that the attorney is responsible
23 for securing. The value of future medical benefits shall not
24 be considered in determining attorney fees.

25 I. Attorney fees, including, but not limited to,

.224595.1

underscored material = new
[bracketed material] = delete

1 the costs of paralegal services, legal clerk services and any
2 other related legal services costs on behalf of a claimant or
3 an employer for a single accidental injury claim, including
4 representation before the workers' compensation administration
5 and the courts on appeal, shall not exceed [~~twenty-two thousand~~
6 ~~five hundred dollars (\$22,500)] thirty-two thousand five
7 hundred dollars (\$32,500). This limitation applies whether the
8 claimant or employer has one or more attorneys representing the
9 claimant or employer and applies as a cumulative limitation on
10 compensation for all legal services rendered in all proceedings
11 and other matters directly related to a single accidental
12 injury to a claimant. The workers' compensation judge may
13 exceed the maximum amount stated in this subsection in awarding
14 a reasonable attorney fee [~~if the judge finds that a claimant,~~
15 ~~an insurer or an employer acted in bad faith with regard to~~
16 ~~handling the injured worker's claim and the injured worker or~~
17 ~~employer has suffered economic loss as a result. However, in~~
18 ~~no case shall this additional amount exceed five thousand~~
19 ~~dollars (\$5,000). As used in this subsection, "bad faith"~~
20 ~~means conduct by the claimant, insurer or employer in the~~
21 ~~handling of a claim that amounts to fraud, malice, oppression~~
22 ~~or willful, wanton or reckless disregard of the rights of the~~
23 ~~worker or employer. Any determination of bad faith shall be~~
24 ~~made by the workers' compensation judge through a separate~~
25 ~~fact-finding proceeding] for the following reasons:~~~~

.224595.1

underscoring material = new
[bracketed material] = delete

1 (1) the workers' compensation judge makes a
2 written finding that there is good cause to authorize attorney
3 fees above the thirty-two-thousand-five-hundred-dollar
4 (\$32,500) cap; good cause includes the following:

5 (a) the worker's claim is for permanent
6 total disability benefits;

7 (b) the worker's injuries are serious;
8 or

9 (c) there has been additional litigation
10 or an appeal after the party has already reached the thirty-
11 two-thousand-five-hundred-dollar (\$32,500) cap; or

12 (2) the workers' compensation judge finds a
13 violation of Section 52-1-28.1 NMSA 1978. However, this
14 additional amount shall not exceed an amount of three thousand
15 dollars (\$3,000) for each violation of Section 52-1-28.1 NMSA
16 1978. Any determination of a violation of that section shall
17 be made by the workers' compensation judge through a separate
18 fact-finding proceeding. Notwithstanding the provisions of
19 Subsection J of this section, the party found to have [~~acted in~~
20 ~~bad faith~~] violated Section 52-1-28.1 NMSA 1978 shall pay one
21 hundred percent of the additional fees awarded for
22 representation of the prevailing party in a [~~bad faith action~~]
23 claim for a violation of that section.

24 J. Except as provided in Paragraphs (3) and (4) of
25 Subsection F of this section, the payment of a claimant's

.224595.1

underscored material = new
[bracketed material] = delete

1 attorney fees determined under this section shall be shared
2 equally by the worker and the employer.

3 K. It is unlawful for any person except a licensed
4 attorney to receive or agree to receive any fee or payment for
5 legal services in connection with any claim for compensation
6 under the Workers' Compensation Act.

7 L. Nothing in this section applies to agents,
8 excluding attorneys, representing employers, insurance carriers
9 or the subsequent injury fund in any matter arising from a
10 claim under the Workers' Compensation Act.

11 M. No attorney fees shall be paid until the claim
12 has been settled or adjudged.

13 ~~[N. Every person violating the provisions of this~~
14 ~~section is guilty of a misdemeanor and upon conviction shall be~~
15 ~~fined not less than fifty dollars (\$50.00) or more than five~~
16 ~~hundred dollars (\$500), to which may be added imprisonment in~~
17 ~~the county jail for a term not exceeding ninety days.~~

18 ~~0.]~~ N. Nothing in this section shall restrict a
19 claimant from being represented before the workers'
20 compensation administration by a nonattorney ~~[as long as that~~
21 ~~nonattorney receives no compensation for that representation~~
22 ~~from the claimant]."~~