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HOUSE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO WORKERS' COMPENSATION; INCREASING THE AMOUNT OF MONEY THAT CAN BE ADVANCED BY EMPLOYERS FOR DISCOVERY COSTS; INCREASING THE MAXIMUM AMOUNT OF ATTORNEY FEES THAT CAN BE COLLECTED IN A WORKERS' COMPENSATION CASE.

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

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

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

A. It is unlawful for any person to receive or agree to receive any fees or payment directly or indirectly in connection with any claim for compensation under the Workers' Compensation Act except as provided in this section.

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

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

25 D. The cost of discovery shall be borne by the

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1 party who requests it. If, however, the claimant requests any
2 discovery, the employer shall advance the cost of paying for
3 discovery up to a limit of [~~three thousand dollars (\$3,000)~~]
4 three thousand five hundred dollars (\$3,500). If the claimant
5 substantially prevails on the claim, as determined by a
6 workers' compensation judge, any discovery cost advanced by the
7 employer shall be paid by that employer. If the claimant does
8 not substantially prevail on the claim, as determined by a
9 workers' compensation judge, the employer shall be reimbursed
10 for discovery costs advanced according to a schedule for
11 reimbursement approved by a workers' compensation judge.

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

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1 consideration:

2 (1) the sum, if any, offered by the employer:

3 (a) before the worker's attorney was
4 employed;

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

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

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

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

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

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

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

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

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

23 (4) if the worker's offer was less than the
24 amount awarded by the compensation order, the employer shall
25 pay one hundred percent of the attorney fees to be paid the

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1 worker's attorney, and the worker shall be relieved from any
2 responsibility for paying any portion of the worker's attorney
3 fees.

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

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

24 I. Attorney fees, including, but not limited to,
25 the costs of paralegal services, legal clerk services and any

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1 other related legal services costs on behalf of a claimant or
2 an employer for a single accidental injury claim, including
3 representation before the workers' compensation administration
4 and the courts on appeal, shall not exceed [~~twenty-two thousand~~
5 ~~five hundred dollars (\$22,500)] thirty thousand dollars
6 (\$30,000) in calendar year 2025. After 2025, the maximum
7 allowable attorney fees shall be adjusted annually by the
8 consumer price index. This limitation applies whether the
9 claimant or employer has one or more attorneys representing the
10 claimant or employer and applies as a cumulative limitation on
11 compensation for all legal services rendered in all proceedings
12 and other matters directly related to a single accidental
13 injury to a claimant. The workers' compensation judge may
14 exceed the maximum amount stated in this subsection in awarding
15 a reasonable attorney fee if the judge finds that a claimant,
16 an insurer or an employer acted in bad faith with regard to
17 handling the injured worker's claim and the injured worker or
18 employer has suffered economic loss as a result. However, in
19 no case shall this additional amount exceed five thousand
20 dollars (\$5,000). As used in this subsection, "bad faith"
21 means conduct by the claimant, insurer or employer in the
22 handling of a claim that amounts to fraud, malice, oppression
23 or willful, wanton or reckless disregard of the rights of the
24 worker or employer. Any determination of bad faith shall be
25 made by the workers' compensation judge through a separate~~

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1 fact-finding proceeding. Notwithstanding the provisions of
2 Subsection J of this section, the party found to have acted in
3 bad faith shall pay one hundred percent of the additional fees
4 awarded for representation of the prevailing party in a bad
5 faith action.

6 J. Except as provided in Paragraphs (3) and (4) of
7 Subsection F of this section, the payment of a claimant's
8 attorney fees determined under this section shall be shared
9 equally by the worker and the employer.

10 K. It is unlawful for any person except a licensed
11 attorney to receive or agree to receive any fee or payment for
12 legal services in connection with any claim for compensation
13 under the Workers' Compensation Act.

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

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

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

25 O. Nothing in this section shall restrict a

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1 claimant from being represented before the workers'
2 compensation administration by a nonattorney as long as that
3 nonattorney receives no compensation for that representation
4 from the claimant."

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