

LFC Requester:	Rachel Mercer- Garcia
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/13/2025 *Check all that apply:*
Bill Number: HB66 Original Correction
 Amendment Substitute

Sponsor: Pamelya Herndon **Agency Name and Code** 632
Short Title: Worker's Compensation Changes **Number:** _____
Person Writing Michael J. Holt
Phone: (505)841-6822 **Email:** Michael.Holt@wca.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	(5)	(5)	(5)	(15)	recurring	UEF

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

The bill proposes two changes to Section 52-1-54 of the Workers' Compensation Act (Act). First, the bill increases the amount of discovery costs that an employer may be called upon to advance to the injured worker. The current level under existing law is \$3,000; the bill seeks to raise this figure to \$6,000. Second, the bill increases the maximum awardable attorney fees, for both workers' and employers' attorneys, from \$22,500 to \$30,000 each side. The \$30,000 figure is to be adjusted after calendar year 2025 pursuant to the consumer price index.

FISCAL IMPLICATIONS

The Workers' Compensation Administration (WCA) includes within the agency the Uninsured Employers Fund ("the UEF"), and this fund exists to pay benefits to injured workers whose employers lack required workers' compensation insurance. In addition to paying indemnity and medical benefits, the UEF can be required to pay the uninsured employer's statutory one-half share of the attorney fee owed to the worker's attorney. Sometimes, the UEF pays 100% of the worker's attorney fee in situations where the worker has made an offer of judgment to settle the case; the employer rejects the offer; and the worker obtains a greater recovery than the amount of the settlement offer.

The UEF has paid approximately \$100,000 in attorneys' fees over the past 5 calendar years, an average of about \$20,000 per year.

If the attorney fee cap were to be raised because the current bill becomes law, the UEF will need to pay an increased amount of attorneys' fees in eligible and compensable cases that have sufficient indemnity value such that the attorney fee due the worker's attorney may exceed the current \$22,500 threshold. Stated otherwise, the UEF's overall, annual payment of attorneys' fees will increase due to the attorney fee cap being raised from \$22,500 to \$30,000.

The UEF attempts to recover all the sums it pays out from the uninsured employer. Thus, the UEF will be able to recoup some percentage of the additional attorney fees imposed if the bill were to become law. Historically, the UEF recovers about 25% of what it pays out.

FIR Methodology: The proposed increase in the attorney fee cap from \$22,500 to \$30,000 represents an increase of \$7,500 or 33%. If the annual attorney fees paid by the UEF is approximately \$20,000 per year, a 33% increase equates to \$26,600, assuming the bill becomes law. Assuming a 25% recovery rate from employers, the net increase to the UEF due to the fee cap equates to \$4,950 (\$5,000 after rounding up.)

SIGNIFICANT ISSUES

The current bill includes a CPI annual adjustment, but the bill does not explain who will perform the calculation; how it will be published to the public; and there is no "rounding" mechanism,

post-adjustment, thereby yielding potentially cumbersome attorney fee cap figures.

The bill also fails to amend the \$3,000 and \$22,500 counterparts that exist in the Occupational Disease Disablement Law. (See NMSA 1978, 52-3-47 (2013). Failure to address both Acts could produce litigation predicated on equal protection considerations.

PERFORMANCE IMPLICATIONS: None

ADMINISTRATIVE IMPLICATIONS: See discussion under “other substantive implications.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP: None

OTHER SUBSTANTIVE ISSUES: HM 83, passed in the 2023 legislative session, asked the WCA to study the \$22,500 fee cap and related issues. A task force of workers’ compensation stakeholders was created, including worker attorneys; employer attorneys; employer representatives; insurer representatives; and two injured workers with closed claims. Over the course of 2024, the attorney fee cap and related issues were studied in depth. The task force made numerous recommendations in its 48-page report, and the complete report of the task force is available on the WCA website. See [Attorney Fee Cap Task Force | New Mexico Workers' Compensation Administration](#).

As relevant here, the task force unanimously recommended raising the attorney fee cap from \$22,500 to \$30,000, and the discovery-cost-advance figure from \$3,000 to \$3,500. The task force recommended that these changes be made to both the Workers’ Compensation and Occupational Disease Acts. The task force did not recommend further adjustments to these figures based on an inflation adjustment approach (*i.e.*, the CPI) but, rather, the legislature should more frequently visit the attorney fee cap during future sessions as an automatic, inflationary adjustment built into the statute would fail to consider changing economic and political conditions in the future (which are unknown).

ALTERNATIVES: None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:

The statutory status quo will be maintained, including that the current attorney fee cap of \$22,500 and the \$3,000 employer-paid-discovery-cost-advance figure will remain in place.

AMENDMENTS: N/A