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HOUSE BILL 501

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Antonio Lujan

AN ACT

**RELATING TO WORKERS' COMPENSATION; PROVIDING FOR INCREASES IN
ATTORNEY FEES; PROVIDING LIMITATIONS; CHANGING EMPLOYER AND
WORKER SHARES.**

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.**

B. In all cases where the jurisdiction of the

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

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

24 D. The cost of discovery shall be borne by the
25 party who requests it. If, however, the claimant requests any

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

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

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

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

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

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

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

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

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

19 (1) if, within ten days after the service of
20 the offer, the opposing party serves written notice that the
21 offer is accepted, either party may then file the offer and
22 notice of acceptance together with proof of service thereof,
23 and thereupon that compensation order may be entered as the
24 workers' compensation judge may direct. An offer not accepted
25 shall be deemed withdrawn, and evidence thereof is not

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1 admissible except in a proceeding to determine costs. If the
2 compensation order finally obtained by the party is not more
3 favorable than the offer, that party ~~must~~ shall pay the costs
4 incurred by the opposing party after the making of the offer.
5 The fact that an offer has been made but not accepted does not
6 preclude a subsequent offer;

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

15 (3) if the employer's offer was greater than
16 the amount awarded by the compensation order, the employer
17 shall not be liable for his ~~[fifty]~~ seventy-five percent share
18 of the ~~[attorneys']~~ attorney fees to be paid the worker's
19 attorney and the worker shall pay one hundred percent of the
20 ~~[attorney's]~~ attorney fees due to the ~~[workers']~~ worker's
21 attorney; and

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

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1 from any responsibility for paying any portion of the worker's
2 attorney fees.

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

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

24 I. [~~Attorneys'~~] Attorney fees, including, but not
25 limited to, the costs of paralegal services, legal clerk

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1 services and any other related legal services costs on behalf
2 of a claimant or an employer for a single accidental injury
3 claim, including representation before the workers'
4 compensation administration and the courts on appeal, shall not
5 exceed [~~twelve thousand five hundred dollars (\$12,500)~~] sixteen
6 thousand five hundred dollars (\$16,500). This increase
7 reflects the average cost-of-living increases in New Mexico, as
8 reflected by the annual increase in the average weekly wage
9 since 1992. Within thirty days of the start of every calendar
10 year, the director shall increase or decrease this limitation
11 on attorney fees included in this subsection and in Subsection
12 J of this section by the increase or decrease, respectively, in
13 the average weekly wage from the previous year. This
14 limitation applies whether the claimant or employer has one or
15 more attorneys representing him and applies as a cumulative
16 limitation on compensation for all legal services rendered in
17 all proceedings and other matters directly related to a single
18 accidental injury to a claimant. The workers' compensation
19 judge may exceed the maximum amount stated in this subsection
20 in awarding a reasonable [~~attorneys'~~] attorney fee if he finds
21 that a claimant, an insurer or an employer acted in bad faith
22 with regard to handling the injured worker's claim and the
23 injured worker or employer has suffered economic loss as a
24 result. However, in no case shall this additional amount
25 exceed [~~two thousand five hundred dollars (\$2,500)~~] five

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1 thousand dollars (\$5,000). As used in this subsection, "bad
2 faith" means conduct by the claimant, insurer or employer in
3 the handling of a claim that amounts to fraud, malice,
4 oppression or willful, wanton or reckless disregard of the
5 rights of the worker or employer. Any determination of bad
6 faith shall be made by the workers' compensation judge through
7 a separate fact-finding proceeding.

8 J. Attorney fees for representation before the
9 appellate courts, including but not limited to the costs of
10 paralegal services, legal clerk services and any other related
11 legal services costs on behalf of a claimant or an employer for
12 a single accidental injury claim, shall not exceed ten thousand
13 dollars (\$10,000). This limitation applies whether the
14 claimant or employer has one or more attorneys representing him
15 and applies as a cumulative limitation on compensation for all
16 legal services rendered in all proceedings and other matters
17 directly related to a single accidental injury to a claimant.

18 [~~J.~~] K. Except as provided for in Paragraphs (3)
19 and (4) of Subsection F of this section, the payment of a
20 claimant's [~~attorneys'~~] attorney fees determined under this
21 section shall be [~~shared equally~~] paid twenty-five percent by
22 the worker and seventy-five percent by the employer.

23 [~~K.~~] L. It is unlawful for any person except a
24 licensed attorney to receive or agree to receive any fee or
25 payment for legal services in connection with any claim for

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1 compensation under the Workers' Compensation Act.

2 [L-] M. Nothing in this section applies to agents,
3 excluding attorneys, representing employers, insurance carriers
4 or the subsequent injury fund in any matter arising from a
5 claim under the Workers' Compensation Act.

6 [M-] N. No [attorneys'] attorney fees shall be paid
7 until the claim has been settled or adjudged.

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

14 [O-] P. Nothing in this section shall restrict a
15 claimant from being represented before the workers'
16 compensation administration by a nonattorney as long as that
17 nonattorney receives no compensation for that representation
18 from the claimant. "