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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 OR OCCUPATIONAL DISEASE DISABLEMENT 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.

B. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the Workers' Compensation Act, the director or workers' compensation judge, unless the claimant is represented by an attorney, may in the director's or judge's discretion appoint an attorney to aid the workers' compensation judge in determining whether the settlement should be approved and, in the event of an

1 appointment, a reasonable fee for the services of the  
2 attorney shall be fixed by the workers' compensation judge,  
3 subject to the limitation of Subsection I of this section.

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

17 D. The cost of discovery shall be borne by the  
18 party who requests it. If, however, the claimant requests  
19 any discovery, the employer shall advance the cost of paying  
20 for discovery up to a limit of three thousand five hundred  
21 dollars (\$3,500). Beginning January 1, 2027, the limit shall  
22 be four thousand dollars (\$4,000), and beginning January 1,  
23 2029, the limit shall increase to four thousand five hundred  
24 dollars (\$4,500). If the claimant substantially prevails on  
25 the claim, as determined by a workers' compensation judge,

1 any discovery cost advanced by the employer shall be paid by  
2 that employer. If the claimant does not substantially  
3 prevail on the claim, as determined by a workers'  
4 compensation judge, the employer shall be reimbursed for  
5 discovery costs advanced according to a schedule for  
6 reimbursement approved by a workers' compensation judge.

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

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

24 (a) before the worker's attorney was  
25 employed;

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

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

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

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

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

17 (1) if, within ten days after the service of  
18 the offer, the opposing party serves written notice that the  
19 offer is accepted, either party may then file the offer and  
20 notice of acceptance together with proof of service thereof,  
21 and thereupon that compensation order may be entered as the  
22 workers' compensation judge may direct. An offer not  
23 accepted shall be deemed withdrawn, and evidence thereof is  
24 not admissible except in a proceeding to determine costs. If  
25 the compensation order finally obtained by the party is not

1 more favorable than the offer, that party shall pay the costs  
2 incurred by the opposing party after the making of the offer.  
3 The fact that an offer has been made but not accepted does  
4 not preclude a subsequent offer;

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

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

19 (4) if the worker's offer was less than the  
20 amount awarded by the compensation order, the employer shall  
21 pay one hundred percent of the attorney fees to be paid the  
22 worker's attorney, and the worker shall be relieved from any  
23 responsibility for paying any portion of the worker's  
24 attorney fees.

25 G. In all actions arising under the provisions of

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

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

20 I. Attorney fees, including, but not limited to,  
21 the costs of paralegal services, legal clerk services and any  
22 other related legal services costs on behalf of a claimant or  
23 an employer for a single accidental injury claim, including  
24 representation before the workers' compensation  
25 administration and the courts on appeal, shall not exceed

1 thirty thousand dollars (\$30,000) in calendar year 2025.  
2 Beginning January 1, 2027, the maximum allowable attorney  
3 fees shall be thirty-two thousand dollars (\$32,000), and  
4 beginning January 1, 2029, the maximum allowable attorney  
5 fees shall increase to thirty-four thousand dollars  
6 (\$34,000). This limitation applies whether the claimant or  
7 employer has one or more attorneys representing the claimant  
8 or employer and applies as a cumulative limitation on  
9 compensation for all legal services rendered in all  
10 proceedings and other matters directly related to a single  
11 accidental injury to a claimant. The workers' compensation  
12 judge may exceed the maximum amount stated in this subsection  
13 in awarding a reasonable attorney fee if the judge finds that  
14 a claimant, an insurer or an employer acted in bad faith with  
15 regard to handling the injured worker's claim and the injured  
16 worker or employer has suffered economic loss as a result.  
17 However, in no case shall this additional amount exceed five  
18 thousand dollars (\$5,000). As used in this subsection, "bad  
19 faith" means conduct by the claimant, insurer or employer in  
20 the handling of a claim that amounts to fraud, malice,  
21 oppression or willful, wanton or reckless disregard of the  
22 rights of the worker or employer. Any determination of bad  
23 faith shall be made by the workers' compensation judge  
24 through a separate fact-finding proceeding. Notwithstanding  
25 the provisions of Subsection J of this section, the party

1 found to have acted in bad faith shall pay one hundred  
2 percent of the additional fees awarded for representation of  
3 the prevailing party in a bad faith action.

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

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

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

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

18 N. By May 1, 2029, the advisory council on  
19 workers' compensation and occupational disease disablement  
20 shall review the maximum allowable attorney fees and the  
21 limitation on discovery costs that employers are required to  
22 advance. By November 1, 2029, the advisory council on  
23 workers' compensation and occupational disease disablement  
24 shall make recommendations to the legislature on any  
25 necessary adjustments to the maximum allowable attorney fees



1 or the limitation on discovery costs that employers are  
2 required to advance.

3 O. Every person violating the provisions of this  
4 section is guilty of a misdemeanor and upon conviction shall  
5 be fined not less than fifty dollars (\$50.00) or more than  
6 five hundred dollars (\$500), to which may be added  
7 imprisonment in the county jail for a term not exceeding  
8 ninety days.

9 P. Nothing in this section shall restrict a  
10 claimant from being represented before the workers'  
11 compensation administration by a nonattorney as long as that  
12 nonattorney receives no compensation for that representation  
13 from the claimant."

14 SECTION 2. Section 52-3-47 NMSA 1978 (being Laws 1987,  
15 Chapter 235, Section 41, as amended) is amended to read:

16 "52-3-47. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY  
17 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY  
18 COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

19 A. It is unlawful for any person to receive or  
20 agree to receive any fees or payment directly or indirectly  
21 in connection with any claim for compensation under the New  
22 Mexico Occupational Disease Disablement Law except as  
23 provided in this section.

24 B. In all cases where the jurisdiction of the  
25 workers' compensation administration is invoked to approve a

1 settlement of a compensation claim under the New Mexico  
2 Occupational Disease Disablement Law, the director or  
3 workers' compensation judge, unless the claimant is  
4 represented by an attorney, may in the director's or judge's  
5 discretion appoint an attorney to aid the workers'  
6 compensation judge in determining whether the settlement  
7 should be approved. In the event of such an appointment, a  
8 reasonable fee for the services of the attorney shall be  
9 fixed by the workers' compensation judge, subject to the  
10 limitation of Subsection I 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 New Mexico  
14 Occupational Disease Disablement Law and the claimant is  
15 represented by an attorney, the total amount paid or to be  
16 paid by the employer in settlement of the claim shall be  
17 stated in the settlement papers, and the workers'  
18 compensation judge shall determine and fix a reasonable fee  
19 for the claimant's attorney, taking into account any sum  
20 previously paid. The fee fixed by the workers' compensation  
21 judge shall be the limit of the fee received or to be  
22 received by the attorney in connection with the claim,  
23 subject to the limitation of Subsection I of this section.

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

1 any discovery, the employer shall advance the cost of paying  
2 for discovery up to a limit of three thousand five hundred  
3 dollars (\$3,500). Beginning January 1, 2027, the limit shall  
4 be four thousand dollars (\$4,000), and beginning January 1,  
5 2029, the limit shall increase to four thousand five hundred  
6 dollars (\$4,500). If the claimant substantially prevails on  
7 the claim, as determined by a workers' compensation judge,  
8 any discovery cost advanced by the employer shall be paid by  
9 that employer. If the claimant does not substantially  
10 prevail on the claim, as determined by a workers'  
11 compensation judge, the employer shall be reimbursed for  
12 discovery costs advanced according to a schedule for  
13 reimbursement approved by a workers' compensation judge.

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

1 of Subsection I of this section. In determining and fixing a  
2 reasonable fee, the workers' compensation judge or courts  
3 shall take into consideration:

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

6 (a) before the employee's attorney was  
7 employed;

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

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

12 (2) the present value of the award made in  
13 the employee's favor; and

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

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

24 (1) if, within ten days after the service of  
25 the offer, the opposing party serves written notice that the

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

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

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

1                   (4) if the worker's offer was less than the  
2 amount awarded by the compensation order, the employer shall  
3 pay one hundred percent of the attorney fees to be paid the  
4 worker's attorney, and the worker shall be relieved from any  
5 responsibility for paying any portion of the worker's  
6 attorney fees.

7                   G. In all actions arising under the provisions of  
8 Section 52-3-35 NMSA 1978, where the jurisdiction of the  
9 workers' compensation administration is invoked to determine  
10 the question of whether the claimant's disablement has  
11 terminated and the claimant is represented by an attorney,  
12 the workers' compensation judge or courts upon appeal shall  
13 determine and fix a reasonable fee for the services of the  
14 claimant's attorney only if the employer is unsuccessful in  
15 establishing that the claimant's disablement has terminated.  
16 The fee when fixed by the workers' compensation judge or  
17 courts upon appeal shall be taxed as part of the costs  
18 against the employer and shall be the limit of the fee  
19 received or to be received by the attorney for services in  
20 the action, subject to the limitation of Subsection I of this  
21 section.

22                   H. In determining reasonable attorney fees for a  
23 claimant, the workers' compensation judge shall consider only  
24 those benefits to the employee that the attorney is  
25 responsible for securing. The value of future medical

1 benefits shall not be considered in determining attorney  
2 fees.

3 I. Attorney fees, including, but not limited to,  
4 the costs of paralegal services, legal clerk services and any  
5 other related legal services costs on behalf of a claimant or  
6 an employer for a single disablement claim, including  
7 representation before the workers' compensation  
8 administration and the courts on appeal, shall not exceed  
9 thirty thousand dollars (\$30,000) in calendar year 2025.

10 Beginning January 1, 2027, the maximum allowable attorney  
11 fees shall be thirty-two thousand dollars (\$32,000), and  
12 beginning January 1, 2029, the maximum allowable attorney  
13 fees shall increase to thirty-four thousand dollars  
14 (\$34,000). This limitation applies whether the claimant or  
15 employer has one or more attorneys representing the claimant  
16 or employer and applies as a cumulative limitation on  
17 compensation for all legal services rendered in all  
18 proceedings and other matters directly related to a single  
19 occupational disease of a claimant. The workers'  
20 compensation judge may exceed the maximum amount stated in  
21 this subsection in awarding a reasonable attorney fee if the  
22 judge finds that a claimant, an insurer or an employer acted  
23 in bad faith with regard to handling the disabled employee's  
24 claims and the employer or disabled employee has suffered  
25 economic loss as a result thereof. However, in no case shall

1 this additional amount exceed five thousand dollars (\$5,000).  
2 As used in this subsection, "bad faith" means conduct by the  
3 claimant, insurer or employer in the handling of a claim that  
4 amounts to fraud, malice, oppression or willful, wanton or  
5 reckless disregard of the rights of the employee or employer.  
6 Any determination of bad faith shall be made by the workers'  
7 compensation judge through a separate fact-finding  
8 proceeding. Notwithstanding the provisions of Subsection J  
9 of this section, the party found to have acted in bad faith  
10 shall pay one hundred percent of the additional fees awarded  
11 for representation of the prevailing party in a bad faith  
12 action.

13 J. Except as provided in Paragraphs (3) and (4) of  
14 Subsection F of this section, the payment of a claimant's  
15 attorney fees determined under this section shall be shared  
16 equally by the employee and the employer.

17 K. It is unlawful for any person except a licensed  
18 attorney to receive or agree to receive any fee or payment  
19 for legal services in connection with any claim for  
20 compensation under the New Mexico Occupational Disease  
21 Disablement Law.

22 L. Nothing in this section applies to agents,  
23 excluding attorneys, representing employers, insurance  
24 carriers or the subsequent injury fund in any matter arising  
25 from a claim under the New Mexico Occupational Disease



1     Disablement Law.

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

4                     N. By May 1, 2029, the advisory council on  
5 workers' compensation and occupational disease disablement  
6 shall review the maximum allowable attorney fees and the  
7 limitation on discovery costs that employers are required to  
8 advance. By November 1, 2029, the advisory council on  
9 workers' compensation and occupational disease disablement  
10 shall make recommendations to the legislature on any  
11 necessary adjustments to the maximum allowable attorney fees  
12 or the limitation on discovery costs that employers are  
13 required to advance.

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

20                    P. Nothing in this section shall restrict a  
21 claimant from being represented before the workers'  
22 compensation administration by a nonattorney as long as that  
23 nonattorney receives no compensation for representation from  
24 the claimant."

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