

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 66

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

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'

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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.

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

17           E. In all cases where compensation to which any  
18 person is entitled under the provisions of the Workers'  
19 Compensation Act is refused and the claimant thereafter  
20 collects compensation through proceedings before the workers'  
21 compensation administration or courts in an amount in excess of  
22 the amount offered in writing by an employer five business days  
23 or more prior to the informal hearing before the  
24 administration, the compensation to be paid the attorney for  
25 the claimant shall be fixed by the workers' compensation judge

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1 hearing the claim or the courts upon appeal in the amount the  
2 workers' compensation judge or courts deem reasonable and  
3 proper, subject to the limitation of Subsection I of this  
4 section. In determining and fixing a reasonable fee, the  
5 workers' compensation judge or courts shall take into  
6 consideration:

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

8 (a) before the worker's attorney was  
9 employed;

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

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

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

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

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

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

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

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

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1 worker shall pay one hundred percent of the attorney fees due  
2 to the worker's attorney; and

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

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

24 H. In determining reasonable attorney fees for a  
25 claimant, the workers' compensation judge shall consider only

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1 those benefits to the worker that the attorney is responsible  
2 for securing. The value of future medical benefits shall not  
3 be considered in determining attorney fees.

4 I. Attorney fees, including, but not limited to,  
5 the costs of paralegal services, legal clerk services and any  
6 other related legal services costs on behalf of a claimant or  
7 an employer for a single accidental injury claim, including  
8 representation before the workers' compensation administration  
9 and the courts on appeal, shall not exceed [~~twenty-two thousand~~  
10 ~~five hundred dollars (\$22,500)~~] thirty thousand dollars  
11 (\$30,000) in calendar year 2025. Beginning January 1, 2027,  
12 the maximum allowable attorney fees shall be thirty-two  
13 thousand dollars (\$32,000), and beginning January 1, 2029, the  
14 maximum allowable attorney fees shall increase to thirty-four  
15 thousand dollars (\$34,000). This limitation applies whether  
16 the claimant or employer has one or more attorneys representing  
17 the claimant or employer and applies as a cumulative limitation  
18 on compensation for all legal services rendered in all  
19 proceedings and other matters directly related to a single  
20 accidental injury to a claimant. The workers' compensation  
21 judge may exceed the maximum amount stated in this subsection  
22 in awarding a reasonable attorney fee if the judge finds that a  
23 claimant, an insurer or an employer acted in bad faith with  
24 regard to handling the injured worker's claim and the injured  
25 worker or employer has suffered economic loss as a result.

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1 However, in no case shall this additional amount exceed five  
2 thousand dollars (\$5,000). As used in this subsection, "bad  
3 faith" means conduct by the claimant, insurer or employer in  
4 the handling of a claim that amounts to fraud, malice,  
5 oppression or willful, wanton or reckless disregard of the  
6 rights of the worker or employer. Any determination of bad  
7 faith shall be made by the workers' compensation judge through  
8 a separate fact-finding proceeding. Notwithstanding the  
9 provisions of Subsection J of this section, the party found to  
10 have acted in bad faith shall pay one hundred percent of the  
11 additional fees awarded for representation of the prevailing  
12 party in a bad faith 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 worker 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 for  
19 legal services in connection with any claim for compensation  
20 under the Workers' Compensation Act.

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

25 M. No attorney fees shall be paid until the claim

1 has been settled or adjudged.

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

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

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

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

24 "52-3-47. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY  
 25 THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--

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1 OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

2 A. It is unlawful for any person to receive or  
3 agree to receive any fees or payment directly or indirectly in  
4 connection with any claim for compensation under the New Mexico  
5 Occupational Disease Disablement Law except as provided in this  
6 section.

7 B. In all cases where the jurisdiction of the  
8 workers' compensation administration is invoked to approve a  
9 settlement of a compensation claim under the New Mexico  
10 Occupational Disease Disablement Law, the director or workers'  
11 compensation judge, unless the claimant is represented by an  
12 attorney, may in the director's or judge's discretion appoint  
13 an attorney to aid the workers' compensation judge in  
14 determining whether the settlement should be approved. In the  
15 event of such an appointment, a reasonable fee for the services  
16 of the attorney shall be fixed by the workers' compensation  
17 judge, subject to the limitation of Subsection I of this  
18 section.

19 C. In all cases where the jurisdiction of the  
20 workers' compensation administration is invoked to approve a  
21 settlement of a compensation claim under the New Mexico  
22 Occupational Disease Disablement Law and the claimant is  
23 represented by an attorney, the total amount paid or to be paid  
24 by the employer in settlement of the claim shall be stated in  
25 the settlement papers, and the workers' compensation judge

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

1 shall determine and fix a reasonable fee for the claimant's  
2 attorney, taking into account any sum previously paid. The fee  
3 fixed by the workers' compensation judge shall be the limit of  
4 the fee received or to be received by the attorney in  
5 connection with the claim, subject to the limitation of  
6 Subsection I of this section.

7 D. The cost of discovery shall be borne by the  
8 party who requests it. If, however, the claimant requests any  
9 discovery, the employer shall advance the cost of paying for  
10 discovery up to a limit of [~~three thousand dollars (\$3,000)~~]  
11 three thousand five hundred dollars (\$3,500). Beginning  
12 January 1, 2027, the limit shall be four thousand dollars  
13 (\$4,000), and beginning January 1, 2029, the limit shall  
14 increase to four thousand five hundred dollars (\$4,500). If  
15 the claimant substantially prevails on the claim, as determined  
16 by a workers' compensation judge, any discovery cost advanced  
17 by the employer shall be paid by that employer. If the  
18 claimant does not substantially prevail on the claim, as  
19 determined by a workers' compensation judge, the employer shall  
20 be reimbursed for discovery costs advanced according to a  
21 schedule for reimbursement approved by a workers' compensation  
22 judge.

23 E. In all cases where compensation to which any  
24 person is entitled under the provisions of the New Mexico  
25 Occupational Disease Disablement Law is refused and the

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1 claimant thereafter collects compensation through proceedings  
2 before the workers' compensation administration or courts in an  
3 amount in excess of the amount offered in writing by an  
4 employer five business days or more prior to the informal  
5 hearing before the administration, the compensation to be paid  
6 the attorney for the claimant shall be fixed by the workers'  
7 compensation judge hearing the claim or the courts upon appeal  
8 in the amount the workers' compensation judge or courts deem  
9 reasonable and proper, subject to the limitation of Subsection  
10 I of this section. In determining and fixing a reasonable fee,  
11 the workers' compensation judge or courts shall take into  
12 consideration:

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

14 (a) before the employee's attorney was  
15 employed;

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

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

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

22 (3) the failure of a party to participate in a  
23 good-faith manner in informal claim resolution methods adopted  
24 by the director.

25 F. After a recommended resolution has been issued

1 and rejected, but more than ten days before a trial begins, the  
2 employer or claimant may serve upon the opposing party an offer  
3 to allow a compensation order to be taken against the employer  
4 or claimant for the money or property or to the effect  
5 specified in the offer, with costs then accrued, subject to the  
6 following:

7 (1) if, within ten days after the service of  
8 the offer, the opposing party serves written notice that the  
9 offer is accepted, either party may then file the offer and  
10 notice of acceptance together with proof of service thereof,  
11 and thereupon that compensation order may be entered as the  
12 workers' compensation judge may direct. An offer not accepted  
13 shall be deemed withdrawn, and evidence thereof is not  
14 admissible except in a proceeding to determine costs. If the  
15 compensation order finally obtained by the party is not more  
16 favorable than the offer, that party shall pay the costs  
17 incurred by the opposing party after the making of the offer.  
18 The fact that an offer has been made but not accepted does not  
19 preclude a subsequent offer;

20 (2) when the liability of one party to another  
21 has been determined by a compensation order, but the amount or  
22 extent of the liability remains to be determined by further  
23 proceedings, the party adjudged liable may make an offer, which  
24 shall have the same effect as an offer made before trial if it  
25 is served within a reasonable time not less than ten days prior

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1 to the commencement of hearings to determine the amount or  
2 extent of liability;

3 (3) if the employer's offer was greater than  
4 the amount awarded by the compensation order, the employer  
5 shall not be liable for the employer's fifty-percent share of  
6 the attorney fees to be paid the worker's attorney and the  
7 worker shall pay one hundred percent of the attorney fees due  
8 to the worker's attorney; and

9 (4) if the worker's offer was less than the  
10 amount awarded by the compensation order, the employer shall  
11 pay one hundred percent of the attorney fees to be paid the  
12 worker's attorney, and the worker shall be relieved from any  
13 responsibility for paying any portion of the worker's attorney  
14 fees.

15 G. In all actions arising under the provisions of  
16 Section 52-3-35 NMSA 1978, where the jurisdiction of the  
17 workers' compensation administration is invoked to determine  
18 the question of whether the claimant's disablement has  
19 terminated and the claimant is represented by an attorney, the  
20 workers' compensation judge or courts upon appeal shall  
21 determine and fix a reasonable fee for the services of the  
22 claimant's attorney only if the employer is unsuccessful in  
23 establishing that the claimant's disablement has terminated.  
24 The fee when fixed by the workers' compensation judge or courts  
25 upon appeal shall be taxed as part of the costs against the

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1 employer and shall be the limit of the fee received or to be  
2 received by the attorney for services in the action, subject to  
3 the limitation of Subsection I of this section.

4 H. In determining reasonable attorney fees for a  
5 claimant, the workers' compensation judge shall consider only  
6 those benefits to the employee that the attorney is responsible  
7 for securing. The value of future medical benefits shall not  
8 be considered in determining attorney fees.

9 I. Attorney fees, including, but not limited to,  
10 the costs of paralegal services, legal clerk services and any  
11 other related legal services costs on behalf of a claimant or  
12 an employer for a single disablement claim, including  
13 representation before the workers' compensation administration  
14 and the courts on appeal, shall not exceed [~~twenty-two thousand~~  
15 ~~five hundred dollars (\$22,500)] thirty thousand dollars  
16 (\$30,000) in calendar year 2025. Beginning January 1, 2027,  
17 the maximum allowable attorney fees shall be thirty-two  
18 thousand dollars (\$32,000), and beginning January 1, 2029, the  
19 maximum allowable attorney fees shall increase to thirty-four  
20 thousand dollars (\$34,000). This limitation applies whether  
21 the claimant or employer has one or more attorneys representing  
22 the claimant or employer and applies as a cumulative limitation  
23 on compensation for all legal services rendered in all  
24 proceedings and other matters directly related to a single  
25 occupational disease of a claimant. The workers' compensation~~

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1 judge may exceed the maximum amount stated in this subsection  
2 in awarding a reasonable attorney fee if the judge finds that a  
3 claimant, an insurer or an employer acted in bad faith with  
4 regard to handling the disabled employee's claims and the  
5 employer or disabled employee has suffered economic loss as a  
6 result thereof. However, in no case shall this additional  
7 amount exceed five thousand dollars (\$5,000). As used in this  
8 subsection, "bad faith" means conduct by the claimant, insurer  
9 or employer in the handling of a claim that amounts to fraud,  
10 malice, oppression or willful, wanton or reckless disregard of  
11 the rights of the employee or employer. Any determination of  
12 bad faith shall be made by the workers' compensation judge  
13 through a separate fact-finding proceeding. [~~Notwithstanding~~]  
14 Notwithstanding the provisions of Subsection J of this section,  
15 the party found to have acted in bad faith shall pay one  
16 hundred percent of the additional fees awarded for  
17 representation of the prevailing party in a bad faith action.

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

22 K. It is unlawful for any person except a licensed  
23 attorney to receive or agree to receive any fee or payment for  
24 legal services in connection with any claim for compensation  
25 under the New Mexico Occupational Disease Disablement Law.

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1 L. Nothing in this section applies to agents,  
2 excluding attorneys, representing employers, insurance carriers  
3 or the subsequent injury fund in any matter arising from a  
4 claim under the New Mexico Occupational Disease Disablement  
5 Law.

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

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

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

23 ~~[O.]~~ P. Nothing in this section shall restrict a  
24 claimant from being represented before the workers'  
25 compensation administration by a nonattorney as long as that

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1 nonattorney receives no compensation for representation from  
2 the claimant."

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