

WORKERS' COMPENSATION - ATTORNEY

FEES

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the Workers' Compensation Act to address the awarding of attorney fees.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the awarding of attorney fees in adjudications involving death or disability benefits and medical benefits;
 - ▶ modifies the obligation to participate in informal dispute resolution mechanisms;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-1-309, as last amended by Laws of Utah 2008, Chapter 382

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-1-309** is amended to read:

34A-1-309. Attorney fees.

30 (1) In ~~[all cases coming]~~ a case before the commission in which ~~[attorneys have been]~~
31 an attorney is employed, the commission ~~[is vested with]~~ has full power to regulate and fix the
32 fees of the ~~[attorneys]~~ attorney.

33 (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, an
34 attorney may file an application for hearing with the Division of Adjudication to ~~[appeal a~~
35 ~~decision or final order to the extent it concerns the]~~ obtain an award of attorney fees as
36 authorized by this section and commission rules.

37 (3) (a) The commission may award reasonable ~~[attorneys']~~ attorney fees on a
38 contingency basis when there is generated:

39 (i) disability or death benefits; or

40 (ii) interest on disability or death benefits ~~[are generated]~~.

41 (b) ~~[Attorney]~~ An employer or its insurance carrier shall pay attorney fees awarded
42 under Subsection (3)(a) ~~[shall be paid by the employer or its insurance carrier]~~ out of the
43 award of:

44 (i) disability or death benefits~~[-]~~; or

45 (ii) interest on disability or death benefits.

46 (4) (a) ~~[If the commission orders that only medical benefits be paid,]~~ In addition to the
47 attorney fees ordered under Subsection (3), the commission may award reasonable attorney
48 fees on a contingency basis for medical benefits ordered paid ~~[if:]~~ in the same percentages for
49 an award under Subsection (3) provided for in rule made by the commission in accordance
50 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if:

51 (i) medical benefits are not approved by:

52 (A) the employer or its insurance carrier; or

53 (B) the Uninsured Employer's Fund created in Section 34A-2-704;

54 (ii) after the employee employs an attorney, medical benefits are paid or ordered to be
55 paid;

56 ~~[(i)]~~ (iii) the commission's informal dispute resolution mechanisms ~~[were fully]~~ are
57 reasonably used by the parties ~~[prior to]~~ before adjudication; and

58 ~~[(ii) at no time were]~~ (iv) the sum of the following at issue in the adjudication of the
59 medical benefit claim is less than \$4,000:

60 (A) disability or death benefits [or]; and

61 (B) interest on disability or death benefits [at issue in the adjudication of the medical
62 benefit claim].

63 (b) ~~[Attorneys']~~ An employer or its insurance carrier shall pay attorney fees awarded
64 under Subsection [(3)] (4)(a) [shall be paid by the employer or its insurance carrier] in
65 addition to the payment of medical benefits ordered.