
SENATE BILL 5801

State of Washington

67th Legislature

2022 Regular Session

By Senators Keiser, Conway, Hasegawa, and Nobles; by request of Department of Labor & Industries

Read first time 01/11/22. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to attorney and witness fees in industrial
2 insurance court appeals; and amending RCW 51.52.130.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 51.52.130 and 2007 c 490 s 4 are each amended to
5 read as follows:

6 ~~(1) ((If, on appeal to the superior or appellate court from the
7 decision and order of the board, said decision and order is reversed
8 or modified and additional relief is granted to a worker or
9 beneficiary, or in cases where a party other than the worker or
10 beneficiary is the appealing party and the worker's or beneficiary's
11 right to relief is sustained, a reasonable fee for the services of
12 the worker's or beneficiary's attorney shall be fixed by the court.))~~

13 (a) The department will pay a worker's or beneficiary's attorneys'
14 fees, fees of medical and other witnesses, and other statutory costs
15 out of the department's administrative fund when the worker or
16 beneficiary appeals a decision of the board, and the court reverses
17 or modifies the board's order and grants additional relief.

18 (b) The employer or retrospective rating group will pay a
19 worker's or beneficiary's attorneys' fees, fees of medical and other
20 witnesses, and other statutory costs when the employer or
21 retrospective rating group appeals a decision of the board, and the

1 court sustains in full or in part the worker's or beneficiary's right
2 to relief.

3 (c) In fixing the ((fee)) worker's or beneficiary's attorney fees
4 under (a) and (b) of this subsection, the court ((shall)) will take
5 into consideration the ((fee-or)) fees((,if-any,)) fixed ((by-the
6 director-and-the-board)) for such attorney's services before the
7 department and the board. If the court finds ((that-the-fee-fixed-by
8 the-director-or-by-the-board-is)) the fees inadequate for services
9 performed ((before-the-department-or-board)), or if the director or
10 the board ((has)) fixed no fee ((for-such-services)), then the court
11 ((shall)) will fix a fee for the attorney's services before the
12 department, or the board, as the case may be, in addition to the fees
13 fixed for the services in the court. ((If-in-a-worker-or-beneficiary
14 appeal-the-decision-and-order-of-the-board-is-reversed-or-modified
15 and-if-the-accident-fund-or-medical-aid-fund-is-affected-by-the
16 litigation, or if in an appeal by the department or employer the
17 worker or beneficiary's right to relief is sustained, or in an appeal
18 by a worker involving a state fund employer with twenty-five
19 employees or less, in which the department does not appear and
20 defend, and the board order in favor of the employer is sustained,
21 the attorney's fee fixed by the court, for services before the court
22 only, and the fees of medical and other witnesses and the costs shall
23 be payable out of the administrative fund of the department.))

24 (d) The department will pay a state fund employer's attorneys'
25 fees out of the department's administrative fund when the employer
26 has 25 employees or less and when a worker appeals the board
27 decision, and the department does not appear and defend, and the
28 board order in favor of the employer is sustained.

29 (e) In the case of self-insured employers, the attorney fees
30 fixed by the court, for services before the court only, and the fees
31 of medical and other witnesses and the costs shall be payable
32 directly by the self-insured employer.

33 (2) In an appeal to the superior or appellate court involving the
34 presumption established under RCW 51.32.185 or 51.32.187, the
35 attorney's fee shall be payable as set forth under RCW 51.32.185 or
36 51.32.187.

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