

Attorney fees in workers' compensation

This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at www.dli.mn.gov/business/workers-compensation-businesses or call the Workers' Compensation Division Help Desk at 651-284-5005 (press 3) or 800-342-5354 (press 3).

The law governing the payment of attorney fees in workers' compensation disputes has changed over time. The date of injury and the effective dates of these changes affect the permissible amount of attorney fees. This information sheet addresses attorney fees that are available for dates of injury occurring from Oct. 1, 1992, through Sept. 30, 2013, and from Oct. 1, 2013, to the present.

Most of the requirements for payment of attorney fees are in Minnesota Statutes, section 176.081. The attorney must have a retainer agreement signed by the employee before making a claim for attorney fees. The retainer agreement must include a notice of the maximum fee that the attorney may charge.

For dates of injury on or after Oct. 1, 2013, the notice of maximum fee must say:

The maximum fee allowed by law for legal services is 20% of the first \$130,000 of compensation awarded to the employee subject to a cumulative maximum fee of \$26,000 for fees related to the same injury.

The employee shall take notice that the employee is under no legal or moral obligation to pay any fee for legal services in excess of the foregoing maximum fee.

If an employee has a retainer agreement with an attorney, the attorney can ask the self-insured employer or insurer to withhold the attorney fees from workers' compensation benefits payable to the employee. Each benefit check payable to the employee must include specific information about the withholding. The attorney must file a statement of attorney fees within 12 months of the date the attorney requested that the insurer withhold fees from the employee's benefit check. The insurer may not pay the withheld fees to the attorney until a compensation judge reviews the fees and orders payment to the attorney.

Attorney fees are payable only when there is a dispute (disagreement) between the employee and the self-insured employer or insurer. Here is an example of a dispute and how attorney fees would be paid.

- The self-insured employer or insurer claims the employee has a 5% permanent partial disability (PPD) and paid the employee on time for 5% PPD.
- The employee claims to have a 7% PPD.
- The employee's attorney requests a hearing and a judge decides the employee has a 7% PPD.
- The attorney fees are based only on the 2% PPD not already paid (7% - 5% = 2%).

Types of attorney fees

Workers' compensation claims may involve a combination of issues or disputes. There are several different types of attorney fees that may be claimed. A compensation judge must approve payment of all types of attorney fees before the fees are paid.

1. Attorney fees paid out of the employee's benefits

Contingent fees: A contingent fee is a percentage of the compensation awarded to the employee on any disputed portion of the compensation. The contingent fee is deducted from the employee's benefits and paid to the attorney.

- For dates of injury between Oct. 1, 1992, and Sept. 30, 2013, the fee is 25% of the first \$4,000 of compensation awarded to the employee and 20% of the next \$60,000 of compensation awarded to the employee, subject to a total maximum fee of \$13,000 for that injury.
- For injuries occurring on or after Oct. 1, 2013, the fee is 20% of the first \$130,000 of compensation to a cumulative maximum of \$26,000.

These maximums apply unless the compensation judge allows an excess fee.

For example, Table 1 shows what the attorney fees would be for a \$50,000 lump-sum settlement of a disputed claim.

Table 1. Contingent attorney fee examples	
Dates of injury occurring between Oct. 1, 1992, and Sept. 30, 2013	Dates of injury occurring on or after Oct. 1, 2013
25% of the first \$4,000 = \$1,000	20% of the first \$50,000 = \$10,000
20% of the remaining \$46,000 = \$9,200	
Total attorney fees payable = \$10,200	Total attorney fees payable = \$10,000

Excess (Irwinⁱ) fees: The contingent fee is presumed to be adequate payment to the attorney for all benefits obtained. However, the attorney may petition a compensation judge for additional fees if the attorney believes the amount under the formula is not adequate payment. To be paid these excess fees, the attorney must file a Statement of Attorney Fees and Costsⁱⁱ and an Excess Fee Exhibitⁱⁱⁱ explaining to the employee and compensation judge why the attorney believes additional fees should be awarded.

2. Attorney fees not paid out of the employee’s benefits

Roraff attorney fees^{iv}: Roraff attorney fees are specific to the disputes about medical benefits. The fee is paid by the self-insured employer or insurer, not the employee. A Roraff fee may be paid when the contingent fee does not adequately pay the attorney because there are no monetary benefits in dispute. It can also be paid when both monetary and medical benefits are in dispute and the contingent fee on the monetary benefits does not adequately pay the attorney.

Roraff fees are calculated by applying the formula in Table 1 to the amount of medical benefits obtained for the employee. The fee for obtaining a disputed medical benefit for which a dollar value can’t be reasonably determined is the amount charged by the attorney in hourly fees for obtaining the benefit or \$500, whichever is less. Unless there is litigation already pending before a compensation judge, the Department of Labor and Industry must certify it has tried to resolve the medical dispute before an attorney fee may be charged.

Table 2. <u>Roraff</u> attorney fee examples (date of injury on or after Oct. 1, 2013)			
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	\$10,000 hospital bill ordered paid	Change of doctor allowed	Monetary benefits of \$1,000 and medical bills of \$8,000 awarded
Rationale	20% of the first \$130,000 = \$2,000 attorney fee (\$10,000 x 20% = \$2,000)	Attorney’s rate was \$225 an hour; attorney spent four hours on this dispute (\$225 x 4 = \$900) Attorney fee allowed: \$500 (The fee is the amount charged or \$500, whichever is less.)	Contingent fee of \$200 on monetary benefits (\$1,000 x 20% = \$200) <u>Roraff</u> fee of \$1,600, because the judge determined \$200 was not an adequate fee (\$8,000 x 20% = \$1,600)
Result	\$2,000 paid to attorney by self-insured employer or insurer	\$500 paid to attorney by self-insured employer or insurer	\$200 paid to attorney out of employee’s benefits; \$1,600 paid to attorney by self-insured employer or insurer

Heaton attorney fees^v: Heaton attorney fees are paid the same as Roraff fees, but for disputes about vocational rehabilitation benefits. Heaton attorney fees are paid by the self-insured employer or insurer, not the employee. A Heaton fee may be paid when the contingent fee does not adequately compensate the attorney because there are no monetary benefits in dispute. They are also paid when both monetary and vocational rehabilitation benefits are in dispute and the contingent fee on the monetary benefits does not adequately compensate the attorney. Heaton fees are calculated the same way as Roraff fees (see Table 2).

Minnesota Statutes, section 176.191, attorney fees^{vi}: If the main dispute is between two or more employers or insurers about which one is liable for an admitted work injury, and the disputed benefits are paid pursuant to a temporary order, the employee's attorney fees are paid by the self-insured employer or insurer found liable for the benefits. Minnesota Statutes, section 176.191(1), limits the award to a reasonable attorney fee.

Edquist fees^{vii}: This attorney fee applies to the amount of reimbursement payable to an intervenor. The fee is calculated at 20% of the amount payable to the intervenor and is withheld from the intervenor's payment and awarded to the employee's attorney. Edquist fees are not paid out of the employee's benefits, such as short-term disability benefits or no-fault insurance.

"Subdivision 7" fees: For injuries from Oct. 1, 1995, to Sept. 30, 2013, the self-insured employer or insurer is required to reimburse the employee 30% of the attorney fees awarded that are more than \$250 where an employer or insurer unsuccessfully disputes a claim. Partial attorney fee reimbursement is not payable for Edquist fees. This fee reimbursement is sometimes waived by the employee when the parties reach a settlement agreement. For injuries on or after Oct. 1, 2013, this reimbursement is available for contingent attorney fees paid out of the employee's benefits, but not for fees paid to the employee's attorney by the employer or insurer.

Changing attorneys

When an employee changes attorneys, the fee may be split between the attorneys according to the benefits obtained or amount of work done by each attorney. The fees payable to the first attorney may or may not be included in the overall statutory limit depending on the date of injury.

Costs and disbursements

If the employee has to bring a claim to obtain benefits owed, the costs and disbursements of the employee's attorney, such as charges to obtain medical reports, can be claimed from the employer/insurer after the benefits are obtained. If an employee loses, the employee is responsible for costs and disbursements incurred by the employee's attorney, except for ordinary operating costs, such as postage, long-distance telephone calls and photocopy charges. Ordinary operating costs incurred by the attorney are not reimbursable by the employee.

Objections

To receive payment, an attorney must file a retainer agreement and a Statement of Attorney Fees with the Office of Administrative Hearings. The employee and employer or insurer must be sent a copy of the Statement of Attorney Fees. An employee, employer or insurer may object to the fees requested by the employee's attorney if they object within 10 days. If an objection is received, a hearing is held about the contested attorney fee. If the parties are unable to resolve their fee disagreement, a decision is made by a judge. The parties may request the decision about the fee be based on written arguments.

Resources

Forms, available at www.dli.mn.gov/business/workers-compensation/work-comp-forms:

- Employee or Insurer’s Objection to Requested Attorney Fees and/or Costs
- Excess Fee Exhibit
- Statement of Attorney Fees and Costs

Minnesota Statutes, available at www.revisor.mn.gov:

- section 176.081
- section 176.191

Certification of disputes information, available at www.dli.mn.gov/workers/workers-compensation/work-comp-alternative-dispute-resolution-services.

ⁱIrwin v. Surdyk's Liquor, 599 N.W.2d 132 (Minn. 1999) (the parts of Minnesota Statutes, section 176.081, regulating attorney fees without permitting review by the court found unconstitutional).

ⁱⁱThis form is available at www.dli.mn.gov/sites/default/files/pdf/sa04.pdf.

ⁱⁱⁱThis form is available at www.dli.mn.gov/sites/default/files/pdf/pf04.pdf.

^{iv}Roraff v. State, Dep't of Transp., 288 N.W.2d 15 (Minn. 1980).

^vHeaton v. J.E. Fryer & Co. et al., 36 W.C.D. 316, 317, 1983 WL 135880.

^{vi}Minnesota Statutes, section 176.191, subd. 8.

^{vii}Edquist v. Browning-Ferris, 380 N.W.2d 787 (Minn. 1986).