

Examples of Challenges Facing Workers and How They Are Addressed By HB 2764 2-26-15

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Section	Problem	Remedy paid for by insurer
656.262 (11)	Insurer fails to pay injured worker or their lawyer properly. Lawyer fights for worker and gets it fixed before a ruling is issued. Lawyer does not get paid.	Injured worker's lawyer gets paid if successful in getting worker paid.
656.262 (11)	Ruling is issued that insurance company has to pay the injured worker or their lawyer and then they don't. If insurance company is unreasonable, 25% penalty goes to worker. Lawyer gets absolute max of \$3,000 plus COLA – regardless of how much work it takes to enforce payment.	Cap removed, and change fee basis from “value of benefit” to “effort required to pursue payment.” Adding recovery of attorney fees for enforcing payment of penalties.
656.262 (14)	When an injured worker goes into deposition or required meeting against an insurance company investigator or lawyer during the investigation phase, they cannot pay for their own lawyer to join them.	Injured worker's attorney gets paid an hourly rate since the injured worker MUST participate in these mandatory meetings during claims investigations.
656.277 (& 656.386(3))	Insurer says injury is non-disabling. Injured worker needs legal help to appeal. S/he wins and therefore gets time-loss. Currently, worker's lawyer gets paid only in very limited circumstances. [This is a key step because worker cannot receive funds until injury is ruled as disabling. This is the place where insurer's incentive to get it wrong is greatest.]	Increases the number of instances in which injured worker's attorney gets paid if injury is reclassified as “disabling” (i.e., only when worker wins)
656.313	Insurance company appeals and appeals. Worker is starved out. Now, if the insurance company loses, they have to pay what they owed in the first place, with limited interest, and rarely have to pay a penalty. The cost of the appeal is cushioned for the insurer because the interest is unfairly calculated. The penalty is often just a few hundred bucks because the amount of money in question was a few thousand dollars – huge to the worker – but small to the insurer.	Injured worker's attorney gets paid fees and interest if worker wins appeal. Injured worker would now get interest on penalty and costs. This levels the playing field for the worker because it better reflects true cost of appeals.
656.382	Insurance company appeals to Court of Appeals. Briefs are filed. Case is argued in court. Then insurance company decides to drop the appeal. Currently worker's lawyer does not get paid for his or her work on the appeal.	Injured worker's lawyer would get paid for work on the appeal.

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656.382	Appeal results in split decision. Currently, injured worker's lawyer would not get paid even if worker won on 95% of the points.	Injured worker's lawyer would get paid for the winning portions of the decision.
656.385	Injured worker's lawyers cannot get paid for helping an injured worker win a dispute with a managed care organization, a medical billing fight, or a dispute over ancillary benefits (like vocational re-training).	Injured worker's lawyer gets paid for victories in MCO disputes, or for medical billing fights, based on effort required to pursue payment.
656.386	Injured worker wins appeal before Workers' Comp Board (or higher) regarding penalties and costs paid to workers. Currently injured worker's lawyer does not get paid for defending or increasing penalties or costs.	Injured worker's lawyer gets paid for victories for workers on WCB (or higher) appeals.
656.388	Legal fees paid out of workers' awards are set in statute. Those fees and the fees assessed on insurance companies fall further and further behind inflation, and don't always capture all the factors in the legal assistance provided.	Regular review of rates by WCB & increased consideration of importance of injured workers' access to justice regardless of amount in question.
New section HB 2764 Sec 10	Workers shorted on time-loss payment often need legal help to get the proper payment. Fees for legal assistance for this service are now capped at \$1,500 and paid out of worker's time-loss benefit.	Rates uncapped and –instead of being paid by worker -- paid by insurer. Fees paid only if attorney helps worker get an increase, and are based on effort required to pursue payment.