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The New Jersey Worker's Compensation Statute Has Been Amended to Eliminate the Credit for Counsel Fees Based upon a Voluntary Offer

Section 34:15-64 (C) has traditionally provided the employer with a credit for counsel fees in the event the employer makes a voluntary payment of permanent disability benefits within 26 weeks from the date the employer is notified of final active medical treatment (MMI). The practice of making voluntary tender offers certainly varies amongst employer and was not looked upon favorably by counsel for the employee.

On August 24, 2018, the governor signed into legislation the removal of the voluntary tender credit for counsel's fees, "after the establishment of an attorney client relationship pursuant to a written agreement". That is, the counsel fee will be based upon the full amount of the award and not reduced based upon any voluntary tender offer of permanency.

COMMENT: The credit for counsel fees still exists with respect to the voluntary tender payment option under the statute; however, it only exists prior to the establishment of the attorney client relationship pursuant to that written agreement. This amendment will certainly encourage the rapid retention of counsel and confirmation of the attorney client relationship in writing. We have seen Claim Petitions filed in the year 2018 within weeks of the date of a completely compensable loss where all benefits are being provided voluntarily. As a result, the concept of "rapid retention of counsel" already appears to be significantly embraced by the injured workers and their counsel. Voluntary payments can still be helpful in resolving disputes with respect to the entitlement to temporary total disability benefits, but will no longer carry with it the potential benefit of a reduction in the respondent's share of the counsel fee.

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