

Changes to the NJ Schedule of Disabilities: Hand and Foot Bill to be Applied Retroactively

WG Alert!

On January 21, 2020, Governor Murphy signed into Law changes to the NJ Schedule of Disabilities to increase permanent disability rates specifically for fingers, hands and feet, as well as increasing benefits for amputation injuries and certain funeral expenses. The reasoning for the increases in permanent disability was that it was widely felt that the workers' compensation permanent disability chart did not fairly compensate an individual for such a critical area of the body that suffers a permanent disability.

Since these increases became law, it was unclear whether these changes were to be applied only to new injuries suffered after the enactment of this new law, or if the new rates could be applied to claims that were perhaps pending at the time the new law was enacted.

Due to this open question, the original sponsor of the legislation introduced A4134, which sought to clarify the effective date of the increases in the rates by making the increase applicable to all claims that were pending before the court on January 21, 2020 with no prior adjudication for permanency. This also corrected an oversight on the increase in the funeral allowance that went into effect on January 21, 2020 from \$3,500 to \$5,000. The oversight was that the increased funeral allowance only applied to those circumstances in which an individual died while receiving workers compensation benefits, but that the death was not the result of the work injury. A4134 included a provision to increase the funeral allowance for those who die as a result of a compensable work accident or illness. A 4134 did pass both houses of the New Jersey legislature on September 24, 2020, and on October 30, 2020, Governor Murphy signed this provision into law.

The effect of this new legislation now makes benefit increases in disabilities to the fingers, hand and foot applicable to any claim that was pending before the Division of Workers' Compensation, as of January 21, 2020. Claims that were resolved after January 21, 2020 but were pending at the time the increases in disability were enacted, included language giving the petitioner the right take advantage of these increases in anticipation of this new clarification of the law. Affected Petitioners can file a motion with the court to amend the settlement order for the additional benefits.

This change only applies to original claim filings and not to Applications for Review and Modification that were pending at the time of the enactment of the increase in benefits. Therefore, claims that were previously adjudicated for disability and had been reopened before the new law was enacted, are still subject to the original schedule of disability of any given year.

Comment: The retroactive application of these changes will treat similarly situated petitioners differently. For example, if a petitioner had competent counsel, who moved the claim expeditiously, and resolved the any time before January 21, 2020, they are not entitled to the change in benefits. Where a petitioner whose claim may have lingered before the Division of Workers Compensation, and not resolved until after January 21, 2020, will be able to take advantage of the increased benefits, regardless of when the injury actually took place.