

OFFICE OF THE GOVERNOR
Department of Workers' Claims
(Amendment)

120 KAR 1:070. Charges for attorneys.

RELATES TO: KRS 342.320

STATUTORY AUTHORITY: KRS 342.260, 342.320

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner to promulgate administrative regulations as he considers necessary to carry on the work of the department and for carrying out the provisions of KRS Chapter 342. For injuries occurring or disabilities arising on or after July 15, 1982 and prior to April 4, 1994, KRS 342.320 requires an administrative law judge to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342 and to commute the final payments of benefits payable under the award to a lump sum for that purpose. KRS Chapter 342.120, as effective prior to April 4, 1994, provided the method by which an employer or its insurance carrier and the Special Fund shared liability for awards for injuries occurring and disabilities arising on or after July 15, 1982, and prior to April 4, 1994. This administrative regulation establishes a mechanism for crediting the above referenced parties for the payment of attorneys' fees in these cases.

Section 1. Credit for Lump Sum Payment of Charges by Attorneys. A party defendant shall be entitled, without further order of the administrative law judge, to credit for the lump sum value of any attorney's fee paid. The procedure for payment of attorney fees and the impact of such payment on weekly benefits shall be as follows:

(1) The Education and Labor Cabinet, Department of Workers' Claims, Division of the Workers' Compensation Funds, shall calculate the credit for attorney's fee as follows:

- (a) Number of weeks as awarded due in future (do not include payments payable prior to attorney fee award) = X weeks.
- (b) Obtain a lump sum of X (X weeks on lump sum table) = Y weeks.
- (c) Divide amount of attorney fee by amount due per week = Z weeks.
- (d) Y weeks minus Z weeks = A weeks.
- (e) Look in table on lump sum and find A weeks in the Present Work column of the chart and then take the figure in the weeks column of the chart = B weeks, the total number of weeks of actual remaining award payments by parties defendant before the credit causes cessation of award payment checks.
- (f) X minus B = C weeks, the number of weeks of benefit cessation required to equal the statutory credit.

(2) The Education and Labor Cabinet, Department of Workers' Claims, Division of Workers' Compensation Funds, shall calculate the employer's credit for attorney's fee as follows:

- (a) Number of weeks due from employer or insurance carrier in future pursuant to KRS 342.120 (do not include payments payable prior to attorney fee award) = X_1 .
- (b) Obtain a lump sum of X_1 (X_1 weeks on lump sum table) = Y_1 weeks.
- (c) Divide amount of attorney fee by amount due per week = Z weeks.
- (d) Multiply Z weeks by employer's percentage of award = Z_1 weeks.
- (e) Y_1 weeks minus Z_1 weeks = A_1 weeks.
- (f) Look in table on lump sum and find A_1 weeks in the Present Worth column of the chart and then take the figure in the weeks column of the chart = B_1 weeks, the number

of weeks yet to be paid by the employer or the insurance carrier before the Special Fund begins to pay disability benefits.

(3) The calculations set forth in subsections (1) and (2) of this section shall be completed by the Division of the Workers' Compensation Funds and the results forwarded to the other payers, as well as the plaintiff. Any disagreements as to the application of the formula shall be resolved by an administrative law judge upon motion by any party. Special Fund's notice shall include the following information: Attorney fee to be paid by each party. The period of time for which each party defendant will be responsible for disability benefit payment and, in cases involving lifetime benefits, the date upon which benefits payments will be reinstituted by the Special Fund after taking credit for the amount advanced to pay the attorney's fee in a lump sum.

(4) When any payer other than the Special Fund has fulfilled its obligation as reduced pursuant to subsection (2) of this section, payments will commence by the Special Fund (there will be no stoppage to recover advance attorney fee payments at this time). The Special Fund shall continue weekly benefit payments until such time as the number of weeks remaining in the specified benefit period or the life expectancy as determined by mortality tables approved by the Commissioner, multiplied by the weekly benefit rate is equal to the total attorney fee and discount paid by all payers on behalf of the injured worker. In claims where benefits are payable for a lifetime, the weekly benefit payments will be reinstituted by the Special Fund at such time as the payer surpasses the life expectancy as determined by the mortality table approved by the Commissioner and shall continue until terminated by death or order of an administrative law judge.

(5) No part of this section should be viewed as a limitation on the party's right to negotiate a settlement subject to statutory approval by an administrative law judge.

(10 Ky.R. 509; eff. 11-2-1983; TAm eff. 8-9-2007; 46 Ky.R. 3012; 47 Ky.R. 543; eff. 12-1-2020; TAm eff. 10-31-2022.)