

§ 300.36 Section 32 agreements

Statement of purpose. To encourage the parties in interest to enter into agreements settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, or to agree to accept a voluntary review process for the determination of compensation benefits.

(a) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, in accordance with section 32 of the Workers' Compensation Law, subject to the terms and conditions of this rule.

(b) Any agreement submitted to the board for approval shall be on a form prescribed by the chair or, alternatively, contain the information prescribed by the chair.

(c) The receipt of an agreement by the board for approval shall act as a stay on all related proceedings before the board.

(d) A represented claimant and an employer, insurance carrier or special fund, who have had a dispute regarding compensation benefits determined by a workers' compensation law judge, may agree to enter into a voluntary binding review process, wherein the parties establish the parameters of a section 32 agreement. Such proposed agreement with the parameters and other terms included therein, shall be submitted to a designee of the Chair. Upon the summary determination by the Chair's designee made pursuant to and within the parameters of the parties' agreement, such determination of compensation benefits set forth therein shall be deemed to be incorporated as a term of the agreement as approved by the board on the date the decision approving the agreement was duly filed and served pursuant to subparagraph b of section 32 of the Workers' Compensation Law.

([d]e) An agreement submitted pursuant to section 32 of the Workers' Compensation Law shall not be binding on the parties in interest unless it is approved by the chair, a designee of the chair, a member of the board, or a Workers' Compensation Law Judge. The agreement shall be approved unless it is determined that:

(1) the agreement is unfair, unconscionable, or improper as a matter of law; or

(2) the agreement is the result of an intentional misrepresentation of a material fact; or

(3) within 10 days of submission of the agreement, the board has received from any party in interest a written request that the agreement be disapproved by the board. A claimant who cashes or deposits a check made pursuant to the agreement may not request that the agreement be disapproved by the board, provided however that a claimant who has been paid an incorrect amount shall have recourse to recover any unpaid amounts and penalties associated to the late or incorrect payment. When the agreement provides for payment to be made pursuant to section 25(9) of the Workers' Compensation Law, the claimant must immediately return such payment when requesting disapproval of the agreement or such request for disapproval may be deemed waived and applicable penalties imposed.

([e]f) The agreement shall be reviewed by the chair, a designee of the chair, a member of the board, or a Workers' Compensation Law Judge, who will make a determination whether

to approve or disapprove the agreement. The chair, designee of the chair, member of the board, or Workers' Compensation Law Judge reviewing the agreement may approve or disapprove the agreement administratively, based on a review of the record before the board, or may choose to schedule a meeting to question the parties about the agreement. If the agreement is reviewed administratively, the Board shall advise the parties in writing of the date the agreement shall be deemed submitted for the purposes of section 32 of the Workers' Compensation Law and this section. If a meeting is scheduled to question the parties about the agreement, the agreement will be deemed submitted for the purposes of Section 32 of the Workers' Compensation Law and this section at such meeting. No agreement shall be approved for a period of 10 calendar days after submission to the board.

([f]g) The board will advise the parties of the approval or disapproval of all agreements by duly filing and serving a notice of approval or disapproval.

([g]h) An agreement which is approved shall be final and conclusive on the parties in interest, and shall not be subject to review pursuant to section 23 of the Workers' Compensation Law. An agreement which is disapproved shall be subject to review pursuant to section 23 of the Workers' Compensation Law.

([h]i) The carrier shall make payments of any award as required in the agreement within 10 days of the filing of the decision approving the agreement. If the carrier fails to make such payments, the carrier shall be subject to penalties pursuant to paragraph (f) of subdivision 3 of section 25 of the Workers' Compensation Law.

([i]j) An agreement may provide for reasonable fees commensurate with the services rendered by the claimant's attorney or licensed representative. Whenever a fee is requested in excess of \$ 450, the requested fee is to be made upon form OC-400.1 attached to the submitted agreement.

([j]k) Any agreement submitted and approved pursuant to section 32 of the Workers' Compensation Law and this rule may be modified at any time by agreement of all parties in interest provided such modification is approved by the board.