

§153-A. Advocate program

1. Advocate program established. The board shall establish an advocate program to provide assistance to qualified employees who proceed to mediation and formal hearing. [PL 1997, c. 486, §4 (NEW).]

2. Qualified employee. For purposes of this section, "qualified employee" means an employee who, with respect to an injury occurring on or after January 1, 1993, has participated in the troubleshooter program and has not informally resolved the dispute and has demonstrated to the board that legal counsel has not been retained. [PL 1997, c. 486, §4 (NEW).]

3. Advocates and advocate attorneys. The executive director shall hire advocates and advocate attorneys under the authority of section 151, subsection 1-A, subject to the Civil Service Law, who must be qualified by experience and training.

A. The minimum qualifications for employment as an advocate must include at least the following:

- (1) A 6-year combination of appropriate experience, education and training in advocacy or dispute resolution;
- (2) Knowledge of administrative, adjudicatory or workers' compensation laws, rules and procedures;
- (3) Knowledge of legal documents, court procedures and rules of evidence; and
- (4) Knowledge of medical and legal terminology and practices with respect to workers' compensation. [PL 1997, c. 486, §4 (NEW).]

A-1. The minimum qualifications for employment as an advocate attorney must include at least admission to the practice of law in the State and current registration with the Board of Overseers of the Bar or eligibility for admission to practice law in the State, as long as the advocate attorney is admitted to practice law in the State and is registered with the Board of Overseers of the Bar within 12 months of the date the advocate attorney was hired. [PL 2007, c. 312, §2 (NEW).]

B. The board shall ensure that advocates and advocate attorneys receive appropriate and ongoing education and training. [PL 2007, c. 312, §2 (AMD).]

C. An advocate or advocate attorney may not represent before the board any insurer, self-insurer or 3rd-party administrator for a period of one year after terminating employment with the board. This paragraph does not apply to a person who has worked as an advocate or advocate attorney for a period of at least 4 years. [PL 2017, c. 29, §1 (AMD).]

[PL 2017, c. 29, §1 (AMD).]

4. Duties of advocates and advocate attorneys. Advocates and advocate attorneys have the following duties:

- A. Assisting qualified employees in matters regarding workers' compensation claims, including negotiations; [PL 1997, c. 486, §4 (NEW).]
- B. Acting as an information resource to qualified employees on laws, decisions, rules, policies and procedures of the board; [PL 1997, c. 486, §4 (NEW).]
- C. Assisting and advocating on behalf of qualified employees to obtain appropriate rehabilitation, return to work and employment security services; [PL 1997, c. 486, §4 (NEW).]
- D. Meeting with or otherwise communicating with insurers, employers and health care and other authorized providers in order to assist qualified employees; [PL 1997, c. 486, §4 (NEW).]
- E. Assisting and advocating on behalf of qualified employees in any mediation or hearing proceeding under the jurisdiction of the board; and [PL 1997, c. 486, §4 (NEW).]

F. Maintaining confidentiality of information and communications with respect to the assistance and representation provided to qualified employees. [PL 1997, c. 486, §4 (NEW).]
[PL 2007, c. 312, §3 (AMD).]

5. Legal advice to advocates and advocate attorneys. The board's general counsel shall assign a staff attorney as necessary to advise advocates and, as necessary, advocate attorneys on the preparation of qualified employees' cases at the formal hearing stage.
[PL 2007, c. 312, §4 (AMD).]

6. Case management authority of advocates and advocate attorneys. An advocate or advocate attorney has the authority to:

A. Manage and prioritize the advocate's or advocate attorney's caseload to efficiently move cases through the board mediation and hearing process and to achieve resolution; [PL 2007, c. 312, §5 (AMD).]

B. With the written approval of the staff attorney, decline cases or cease assistance to an employee when the advocate or advocate attorney after investigation finds:

- (1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;
- (2) The statute of limitations has expired;
- (3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;
- (4) The employee's case is based on a claim of discrimination governed by section 353;
- (5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a preexisting condition in a significant manner; or
- (6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction or has been found to have committed a fraudulent act by the abuse investigation unit of the board; and [PL 2007, c. 312, §5 (AMD).]

C. With the written approval of the staff attorney, present lump-sum settlements on cases pursuant to section 352. [PL 1999, c. 410, §1 (NEW).]

A qualified employee whose case is declined or whose advocate or advocate attorney assistance ceases pursuant to this subsection may appeal the action to the executive director of the board, within 30 days of the action. The executive director's ruling on the appeal is final and is not subject to judicial review. If the executive director finds assistance by an advocate or advocate attorney should resume, the employee must be assigned to an advocate or advocate attorney other than the advocate or advocate attorney who declined the case or ceased assistance.

[PL 2007, c. 312, §5 (AMD).]

7. Rulemaking. In addition to the case management authority established in subsection 6, the board may establish by rule additional reasons for which the advocates may decline or cease assistance on cases. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.
[PL 1999, c. 410, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 486, §4 (NEW). PL 1999, c. 410, §1 (AMD). PL 2003, c. 608, §11 (AMD). PL 2007, c. 312, §§2-5 (AMD). PL 2017, c. 29, §1 (AMD).

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