

## 11 NCAC 23A .0502 COMPROMISE SETTLEMENT AGREEMENTS

- (a) The Commission shall not approve a compromise settlement agreement unless it contains the following:
- (1) The employee knowingly and intentionally waives the right to further benefits under the Workers' Compensation Act for the injury that is the subject of this agreement.
  - (2) The parties' agreement, if any, as to the payment of the costs due to the Commission pursuant to 11 NCAC 23E .0203, and any mediation costs pursuant to 11 NCAC 23G .0107. If there is no agreement as to the payment of some or all of these costs, the compromise settlement agreement shall include the credits, including the amounts, to be applied by the employer or carrier against the settlement proceeds.
  - (3) An affirmative statement that no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released by this agreement.
  - (4) Whether the employee has, or has not, returned to work.
  - (5) If the employee has returned to work, whether the employee is earning the same or greater average weekly wage.
  - (6) If the employee has returned to work at a lower average weekly wage, a description of the specific job or position, the name of the employer, and the average weekly wage earned. This Subparagraph does not apply if the employee is represented by counsel or if the employee certifies that partial wage loss due to an injury or occupational disease is not being claimed.
  - (7) If the employee has not returned to work, a summary of the employee's age, educational level, past vocational training, past work experience, and any emotional, mental, or physical impairment that predates the current injury or occupational disease. This Subparagraph does not apply if:
    - (A) it places an unreasonable burden upon the parties;
    - (B) the employee is represented by counsel; or
    - (C) the employee certifies that total wage loss due to an injury or occupational disease is not being claimed.
- (b) No compromise settlement agreement shall be considered by the Commission unless the following requirements are met:
- (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent to the employee's future earning capacity, are submitted with the agreement to the Commission by the employer, carrier, administrator, or the attorney for the employer.
  - (2) The employee, the employee's attorney of record, if any, and an attorney of record or other representative who has been given the authority to sign for the employer, carrier and administrator, have signed the agreement.
  - (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or administrator has undertaken to pay all medical expenses for the compensable injury to the date of the settlement agreement.
  - (4) In a claim in which the employer, carrier, or administrator has not agreed to pay all medical expenses of the employee related to the injury up to the date of the settlement agreement, the settlement agreement contains a list of all known medical expenses of the employee related to the injury to the date of the settlement agreement. This list of known medical expenses shall include:
    - (A) All expenses that have been paid by the employer, carrier, or administrator;
    - (B) All expenses that the employer, carrier, or administrator disputes;
    - (C) All expenses that have been paid by the employee;
    - (D) All expenses that have been paid by a health benefit plan;
    - (E) All unpaid expenses that will be paid by the employer, carrier, or administrator; and
    - (F) All unpaid expenses that will be paid by the employee.
  - (5) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical expense will notify the unpaid health care provider in writing of the party's responsibility to pay the unpaid medical expense. Other unpaid health care providers will be notified in writing of the completion of the settlement by the party specified in the settlement agreement:
    - (A) when the employee or the employee's attorney has notified the unpaid health care provider in writing under G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment; or
    - (B) when the unpaid health care provider has notified the employee or the employee's attorney in writing of its claim for payment for the costs of medical treatment and has requested notice of a settlement.

- (6) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement agreement does not require payment of any medical expense in excess of the maximum allowed under G.S. 97-26.
  - (7) The settlement agreement contains a finding that the positions of the parties to the agreement are reasonable as to the payment of medical expenses.
- (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be distributed for review in accordance with Paragraphs (a) through (c) of Rule .0609 of this Subchapter. Any changes or addenda to the agreement submitted to the Commission shall be served upon the opposing party contemporaneously with submission to the Commission.
- (d) The employer, carrier, or administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee, if unrepresented.
- (e) An employee's attorney who seeks fees in connection with a compromise settlement agreement shall submit a copy of the fee agreement with the employee. Further, if the employee's attorney is aware of a fee being claimed by a prior attorney for the employee, the employee's attorney shall advise the Commission at the time of the submission of a compromise settlement agreement whether an agreement has been reached with the prior attorney regarding a division of the fee and, if so, the division proposed.

*History Note: Authority G.S. 97-17; 97-80(a); 97-82;  
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