

FISCAL-YEAR 2009



**COLLECTION AND ASSESSMENT
OF FINES AND PENALTIES**

IN THE WORKERS' COMPENSATION SYSTEM

Workers' Compensation Division
Minnesota Department of Labor and Industry
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Table of contents

Introduction	1
Penalty procedure and allocation	2
Observations	2
Conclusion	4
Appendix table	

Introduction

Minnesota Statutes §176.222 directs the commissioner of the Department of Labor and Industry (DLI) to submit an annual report regarding the assessment and collection of fines and penalties under the workers' compensation law to the Legislature.

Fines and penalties are found throughout the workers' compensation statutes and are directed at the following entities for the below mentioned reasons.

- **Employers:**
 - failure to obtain workers' compensation insurance;
 - failure to post required posters;
 - late filing of First Report of Injury forms;
 - falsifying insurance information.

- **Self-insured employers, insurance companies and third-party administrators:**
 - failure to pay benefits to an injured employee or file a timely denial of liability;
 - failure to pay benefits when ordered to do so by the commissioner or a compensation judge;
 - failure to file required reports;
 - denying benefits without notice or reason;
 - failure to respond within 30 days to the department's request for information;
 - failure to pay pursuant to an order within 45 days;
 - late filing or payment of assessments.

- **Vocational rehabilitation providers:**
 - failure to follow the rehabilitation rules.

- **Certified managed care plans and health care providers:**
 - failure to provide services as required by statute or rule, or in accordance with the managed care plan as certified.

- **Any party to a claim:**
 - failure to release requested existing medical data in a timely fashion.

Under the workers' compensation law, penalties are paid either to the Assigned Risk Safety Account or directly to injured employees. This report illustrates a comparative analysis for state-fiscal-years 2006 through 2009, which begin July 1 and end June 30.

Penalty procedure and allocation

When a potential penalty situation is identified, a penalty notice is sent describing the infraction and the penalty to be paid. An objection to the penalty must be filed in writing within 30 days, except for penalties for failure to obtain workers' compensation insurance, which must be filed within 10 days. Upon timely objection to a penalty, attempts are made to reach a negotiated settlement. If a settlement cannot be obtained, the matter is brought forth to the Office of Administrative Hearings (OAH) and can be appealed to the Minnesota Workers' Compensation Court of Appeals and the Minnesota Supreme Court. In certain cases, appeals are heard by the Rehabilitation Review Panel (Minnesota Statutes §176.102) or the Medical Services Review Board (Minnesota Statutes §176.103) prior to being heard by the Minnesota Workers' Compensation Court of Appeals and the Minnesota Supreme Court.

Observations

Failure to insure

Unlike other areas within the department, the mandatory coverage or failure to insure penalties area have a wider range of unknown factors when a penalty is issued. The initial penalty amount is determined based upon an estimated evaded premium (EEP). To determine the EEP the department must make assumptions regarding the type of business and payroll. These assumptions are based upon information submitted to the Department of Labor and Industry by the employer. Upon notification of a penalty, the employer may furnish the department with additional information to calculate a true evaded premium, which is then used to determine the actual penalty. Therefore, the initial penalty amount is a starting point and the final penalty amount is what the department intends to collect.

The disparity between the final penalty amount and the collected amount is the result of problems throughout the collection process due to employer bankruptcy or lack of assets, or the department's inability to locate the employer.

The department has continued to improve and increase its efforts to find employers that have never obtained or fail to maintain workers' compensation coverage. This has included stepping up efforts to ensure canceled policies are investigated within six months of the cancellation. Additionally, in response to the Legislative Auditor's findings in a report issued in February 2009, the department has developed a means to investigate employers that should have obtained workers' compensation insurance but never did so. Both of these efforts have dramatically increased the number of penalties issued and subsequent collections of penalties owed. There was a 71 percent increase in the number of penalties issued from FY08 to FY09 and a 36 percent increase in the amount of penalties collected.

Prohibited practice penalties

It appears the large decrease in prohibited practice penalties, as shown on the attached table, is due to increased compliance by insurers and self-insurers responding to department requests.

Late filing of special fund assessment penalties

There was a 31 percent drop in the number of penalties assessed due to the late filing of special fund assessment reports. This was due, in part, to the institution of an online filing system versus reliance on paper correspondence.

Claim-related penalties

Although there is ordinarily some natural fluctuation in the numbers of these penalties from year to year, most claim-related penalties have trended slightly downward since 2001. Late denial and late first payment penalties have declined slightly overall since 2001. This trend follows a gradual decline in the number of “lost-time” claims during that same period and the slight increase in timeliness of first action on claims.

A large increase in the number of penalties for late filing of first report comes from increased reporting problems with several insurance companies, some of which moved claim office locations in the past year or so.

An increase in the quantity of the “other penalties” category since 2005 is primarily due to review of all denials of primary liability. In November 2005, the department implemented a review of denials for conformity with statutory requirements. All lost-time denials are reviewed for specificity (Minnesota Statutes §176.221 and 176.84) and for evidence of proper investigation and other elements (Minnesota Statutes §176.225). This effort is designed to improve the quality and consistency of denial notices throughout the claims handling industry. This effort has resulted in a slight decrease in 2008 and 2009.

Rehabilitation provider discipline

This year the department focused on positioning itself to improve stakeholder compliance with workers’ compensation laws and rules. An internal process review was completed and is in the preliminary stages of implementation. An external stakeholder group was convened and they recommended increased enforcement measures for rehabilitation providers. The department continues to provide education to stakeholders to attain voluntary compliance. In the coming year, the department will complete implementation of the stakeholder recommendations from the internal and external process reviews. In combination with educational efforts, it is anticipated voluntary compliance will increase, an indicator of improved efficiency and effectiveness in this area of responsibility.

Failure to report

The department is required to verify insurance coverage pursuant to Minnesota Statutes §176.182 when a business or individual wishing to do business applies for a license or permit in Minnesota. The Certificate of Compliance is a form used by local licensing agencies to capture insurance information and is provided to the department on a periodic basis. Failure to provide this information or providing falsified information results in a \$2,000 penalty against the business or individual. The department has implemented a process by which these penalties may be assessed. Training was provided to the League of Minnesota Cities and county personnel.

Conclusion

During the past year, the department worked with both the Department of Employment and Economic Development and the Department of Revenue to increase communication, data sharing and, ultimately, impact enforcement efforts. Initial findings show these efforts to be successful. Continued collaboration will be fostered to ensure compliance with the laws of Minnesota.

Appendix table

Workers' Compensation Division penalty statistics

Penalty type	FY 2006				FY 2007				FY 2008				FY 2009			
	Assessed		Collected		Assessed		Collected		Assessed		Collected		Assessed		Collected	
	Total #	Dollar amount														
Late filing of 1st report (M.S. 176.231)	674	\$288,125	460	\$193,542	502	\$216,500	510	\$215,996	796	\$343,750	670	\$284,104	694	\$309,250	624	\$268,592
Late 1st payment (M.S. 176.221 & 176.225)	1,104	\$426,572	1,080	\$367,475	1,012	\$444,260	941	\$345,778	985	\$393,589	970	\$348,555	811	\$353,198	800	319,224
		\$150,207				\$148,540				\$138,753				\$121,273		
Late denial (M.S. 176.221)	461	\$277,000	397	\$203,668	342	\$199,000	279	\$145,141	298	\$158,500	243	\$113,985	310	\$208,750	272	\$142,480
Prohibited practices (M.S. 176.194)	62	\$228,000	48	\$113,086	86	\$366,000	75	\$253,211	36	\$153,000	46	\$134,299	27	\$81,000	17	\$45,588
Rehabilitation provider discipline (M.S. 176.102)	4	\$2,350	5	\$2,550	5	\$3,150	4	\$2,700	1	\$16,500	1	\$11,000	9	\$4,850	11	\$10,850
Managed care organization discipline (M.S. 176.1351)	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
Health care provider discipline (M.S. 176.103)	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0
Failure to insure (M.S. 176.181)	153	\$2,989,498	159	\$492,075	144	\$1,796,805	157	\$472,168	295	\$4,078,020	240	\$769,097	505	\$4,457,262	451	\$1,056,021
		\$2,519,905				\$1,447,706				\$3,420,825				\$2,955,804		
Late filing of special fund assessment (M.S. 176.129 & 176.130)	82	\$257,441	73	\$209,591	119	\$160,387	103	\$117,593	62	\$90,711	57	\$61,244	28	\$112,075	29	\$54,803
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	292	\$157,266	187	\$76,159	353	\$193,362	328	\$146,522	281	\$116,100	241	\$89,141	268	\$124,156	242	\$86,954
		\$71,350				\$37,248				\$48,831				\$28,852		
Totals	2,832	\$4,378,216	2,409	\$1,658,146	2,563	\$3,216,152	2,397	\$1,699,109	2,754	\$4,880,559	2,468	\$1,811,425	2,652	\$4,299,208	2,446	\$1,984,512

The differences between the penalties assessed and collected is a result of: rescinded and settled penalties, timing delays, and data for penalties paid to employees not being collected by the department.

The assessed penalty amounts for late 1st payment and other penalties show the amount payable to the department first and the amount payable to the employee second.

The assessed penalty amounts for failure to insure penalties show the estimated amount first and the reduced amount second.