



FISCAL-YEAR 2012

**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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Contents

Introduction	1
Penalty procedure and allocation	2
Observations	2
Conclusion	3
Appendix table	4

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 2009 through 2012, 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 areas have a wider range of unknown factors when a penalty is assessed. The initial penalty amount is based upon an estimated evaded premium (EEP). To determine the EEP DLI must make assumptions regarding the type of business and payroll. These assumptions are based on information submitted to DLI by the employer. Upon notification of a penalty, the employer may furnish DLI 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 DLI 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, lack of assets, the department's inability to locate the employer and other factors beyond DLI's control.

DLI has continued to improve its efforts to find employers that have never obtained or fail to maintain workers' compensation coverage. During the past year, DLI has made efforts to proactively contact new employers to provide them with information regarding their potential obligation to carry workers' compensation insurance, assist with a better understanding of their obligation and promote compliance with workers' compensation laws. In response to employers' requests, DLI is also revamping the penalty process to include correspondence that is more understandable to the employer.

Late filing of special fund assessment penalties

There was an increase in the number of penalties due to late filing and payment of the special fund assessment back to levels similar to 2006, 2007 and 2008. The amount assessed has leveled off due to fewer days payments were late. Penalties increase the later assessments are paid.

Claim-related penalties

Most claim-related penalties had been trending downward since fiscal-year 2007, paralleling the gradual decline in the number of lost-time claims and gradual increase in the timeliness of the insurer's first action (making the first payment of wage-loss benefits or denying liability) during the same time period. However, the numbers increased in fiscal-year 2012 due to the gradual increase in the number of lost-time claims that is beginning to occur and the slight decrease in the timeliness of the insurer's first action in the past couple of years.

Fluctuations in the number of penalties for late filing of the first report usually come from reporting problems with large insurance companies that occur periodically and are later resolved.

The increase in the quantity in the "other" penalties category in fiscal-year 2011 is primarily due to the implementation of a process to routinely review the timeliness of payments for awards on stipulation and the

issuance of penalties for late payments, which occurred during the year. In addition, there were an increased number of penalties for failing to file forms in 2012.

Conclusion

Penalties for failure to insure have continued to increase during the three previous years due to changes in technology that allow the department's staff to electronically identify employers that do not have current workers' compensation insurance by accessing wage data maintained by the Minnesota Department of Employment and Economic Development. It is anticipated this uptick will level off during the coming fiscal year.

Additionally, the increased outreach to new business owners should correlate with an overall decline in businesses found without insurance over time. Claim-related penalties continued their downward trend, which is reflective of the decline in numbers of lost-time claims and the increase in timeliness of insurer's first action. The increase in "other" penalties was primarily due to a change in process review and should stabilize as the process is incorporated into everyday operations going forward.

Appendix table
Workers' Compensation Division penalty statistics

Penalty type	FY 2009				FY 2010				FY 2011				FY 2012			
	Assessed		Collected		Assessed		Collected		Assessed		Collected		Assessed		Collected	
	Total #	Dollar amount	Total #	Dollar amount	Total #	Dollar amount	Total #	Dollar amount	Total #	Dollar amount	Total #	Dollar amount	Total #	Dollar amount	Total #	Dollar amount
Late filing of 1st report (M.S. 176.231)	694	\$309,250	624	\$268,592	553	\$227,875	430	\$178,641	611	\$263,875	514	\$215,744	675	\$293,625	535	\$234,300
Late 1st payment (M.S. 176.221 & 176.225)	811	\$353,198	800	319,224	688	\$344,738	658	\$273,112	670	\$300,682	628	\$260,044	753	\$334,600	697	\$275,578
		\$121,273				\$110,667				\$103,699				\$117,917		
Late denial (M.S. 176.221)	310	\$208,750	272	\$142,480	289	\$187,500	232	\$121,020	227	\$154,500	170	\$90,750	195	\$105,750	162	\$79,075
Prohibited practices (M.S. 176.194)	27	\$81,000	17	\$45,588	56	\$183,000	49	\$138,437	38	\$117,000	33	\$92,975	47	\$150,000	27	\$69,500
Rehabilitation provider discipline (M.S. 176.102)	9	\$4,850	11	\$10,850	3	\$1,350	5	\$2,700	5	\$2,650	8	\$4,000	2	\$1,050	2	\$1,050
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)	505	\$4,457,262	451	\$1,056,021	661	\$3,161,394	825	\$1,385,416	1,095	\$4,199,216	1,149	\$1,658,946	757	\$2,624,200	850	\$1,302,766
		\$2,955,804				\$2,151,051				\$2,107,626				\$1,582,484		
Late filing of special fund assessment (M.S. 176.129 & 176.130)	28	\$112,075	29	\$54,803	31	\$93,894	37	\$70,866	79	\$108,161	31	\$42,498	19	\$8,504	4	\$4,000
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	268	\$124,156	242	\$86,954	235	\$102,916	216	86,811	277	\$103,990	219	74,476	385	\$133,832	253	91,931
		\$28,852				\$53,811				\$126,362				\$154,431		
Totals	2,652	\$4,299,208	2,446	\$1,984,512	2,516	\$3,456,802	2,452	\$2,257,004	3,002	\$2,821,039	2,752	\$2,439,433	2,833	2,882,193	2,530	2,058,200

* "Failure to Insure" data for FY'2012 was extracted from the State of Minnesota's SWIFT Data Warehouse.

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.