

FISCAL YEAR 2015



**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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February 2016

The total estimated cost of publishing this report is \$500.

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Introduction

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

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

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

- **Self-insured employers, insurance companies and third-party administrators, for:**
 - 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; or
 - late filing or payment of assessments.

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

- **Certified managed care plans and health care providers, for:**
 - 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, for:**
 - 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 2012 through 2015, 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

DLI's Special Compensation Fund (SCF) unit assesses mandatory coverage or failure to insure penalties, which have a wide range of unknown factors when the penalty is investigated and assessed. The initial penalty amount is based upon an estimated evaded premium (EEP). To determine the EEP, SCF investigators must make assumptions regarding the type of business and payroll. These assumptions are based on information submitted to the investigator by the employer. Upon notification of a penalty, the employer may furnish SCF 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 SCF intends to collect.

The disparity between the final penalty amount and the collected amount is the result of challenges throughout the collection process due to employer bankruptcy, lack of employer assets, inability to locate the employer or other factors beyond SCF's control.

Since 2012, SCF has increased its efforts to contact new employers to provide them with information regarding their potential obligation to carry workers' compensation insurance, to assist them with a better understanding of their obligation and to promote compliance with workers' compensation laws. In response to employers' requests, DLI is also updating its communications to make them more understandable to employers.

Late filing of special fund assessment penalties

These penalties continue to be issued. The volume and amount of penalties have stabilized from 2014 to 2015.

Claim-related penalties

In fiscal-year 2014, DLI's Compliance, Records and Training unit (CRT) instituted a new collections procedure for unpaid claim-related penalties. This new procedure has resulted in a dramatic increase in the number of claim-related penalties collected in fiscal-years 2014 and 2015.

In fiscal-year 2013, the number of prohibited practices penalties increased due to several insurance companies, self-insured employers or third-party administrators incurring multiple penalties for failing to respond to DLI requests or late payments of awards or orders. The number of prohibited practices penalties assessed has returned to baseline in fiscal-years 2014 and 2015, due to increased compliance with responding to DLI requests.

Fluctuations in the number of penalties for late filing of the first report of injury usually come from reporting problems with large insurance companies that occur periodically and are later resolved. The increase in late filing of first report of injury penalties in fiscal-years 2014 and 2015 is partially due to an increase in the number of lost-time claims and also due in part to reporters adjusting to the mandated electronic filing of the first report of injury. Many reporters

now automatically trigger their system to send first reports of injury when certain criteria are met; thus, DLI is receiving first reports of injury that may not have been filed in the past, increasing both the number of filings and the number of penalties assessed.

“Other penalties” consist of various penalties for late payments of indemnity benefits, awards or orders, failing to file required forms, etc. Since fiscal-year 2013, a high percentage of “other penalties” assessed has been due to insurers not filing a required form when requested by CRT. In fiscal-year 2015, most of the “other penalties” were assessed for the insurer’s failure to file a Disability Status Report form or a Notice of Intention to Discontinue Workers’ Compensation Benefits form after the employee had not returned to work within a certain period of time.

Rehabilitation provider discipline increased in fiscal-years 2014 and 2015 due to the processing in fiscal-year 2014 of a backlog of approximately 100 complaints. The number of complaints submitted and processed has since returned to baseline.

Conclusion

Failure-to-insure penalties and the amount collected have declined from fiscal-year 2012. Increased outreach to new business owners has reduced the number of uninsured Minnesota employers, thereby decreasing penalties.

The new claim-related penalty collection procedure has resulted in a dramatic increase in the number of penalties collected in fiscal-years 2014 and 2015.

The marked increase in penalties issued for late filing of the first report of injury in fiscal-years 2014 and 2015 is likely due to increased filings from system auto-triggers related to mandatory electronic reporting.

“Other penalties” have increased with the Compliance, Records and Training unit taking a more systematic approach with insurers for failing to file a required form after a request for the information.

Rehabilitation provider discipline spiked due to the processing of a backlog of complaints, but has returned to baseline.

Appendix table
Workers' Compensation Division penalty statistics

Penalty type	FY 2012				FY 2013				FY 2014				FY 2015			
	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)	675	\$293,625	535	\$234,300	617	\$265,750	467	\$202,900	862	\$377,375	768	\$333,605	888	\$403,500	899	\$346,275
Late 1st payment (M.S. 176.221 & 176.225)	753	\$334,600 \$117,917	697	\$275,578	757	\$314,491 \$114,260	688	\$262,637	806	\$340,898 \$126,967	829	\$328,187	747	\$313,739 \$117,055	771	\$295,914
Late denial (M.S. 176.221)	195	\$105,750	162	\$79,075	194	\$93,250	167	\$76,250	175	\$87,500	165	\$82,125	171	\$102,500	180	\$80,775
Prohibited practices (M.S. 176.194)	47	\$150,000	27	\$69,500	60	\$246,000	40	\$162,086	37	\$129,000	40	\$141,500	34	\$114,000	41	\$106,785
Rehabilitation provider discipline (M.S. 176.102)	2	\$1,050	2	\$1,050	1	\$1,000	1	\$1,000	3	\$2,250	3	\$2,250	6	\$3,625	8	\$5,075
Managed care organization discipline (M.S. 176.1351)	0	\$0	0	\$0	1	\$1,500	0	\$0	1	\$25,000	1	\$25,000	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)	757	\$2,624,200 \$1,582,484	850	\$1,302,766	572	\$2,017,591 \$1,554,745	791	\$1,264,339	463	\$1,848,265 \$1,514,061	558	\$935,393	375	\$1,988,272 \$1,537,270	442	\$912,089
Late filing of special fund assessment (M.S. 176.129 & 176.130)	19	\$8,504	4	\$4,000	8	\$10,578	6	\$9,650	35	\$66,271	20	\$46,297	33	\$67,199	28	\$42,671
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 & 176.84)	385	\$133,832 \$154,431	253	\$91,931	485	\$168,271 \$180,540	332	\$111,060	417	\$157,805 \$139,918	383	\$134,723	470	\$148,359 \$216,044	509	\$111,534
Totals	2,833	\$2,882,193	2,530	\$2,058,200	2,695	\$2,950,385	2,492	\$2,089,923	2,799	\$2,967,045	2,767	\$2,029,079	2,724	\$3,023,291	2,878	\$1,901,117

* "Failure to Insure" data for FY 2012 was extracted from the State of Minnesota's SWIFT Data Warehouse. The State of Minnesota converted from MAPS to SWIFT in July 2011. 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.