

FISCAL YEAR 2016



**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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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 2013 through 2016, 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 penalties against employers doing business in Minnesota when the employer does not have workers' compensation insurance coverage in effect for its employees.

Mandatory coverage or failure to insure penalties have a wide 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 the amount DLI intends to collect.

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

DLI has continued to explore methods to find employers that have never obtained or fail to maintain workers' compensation coverage. During the past year, DLI has contacted hundreds of 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 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 returned to baseline in fiscal-years 2014 and 2015, due to increased compliance with responding to DLI requests. Warnings are not tracked as part of this report, so though DLI issued fewer prohibited practices penalties overall in fiscal-year 2016, there were a higher number of penalties with a dollar amount assessed, accounting for the slight increase.

The increase in late filing of first report of injury penalties in fiscal-years 2014 through 2016 is partially due to reporters adjusting to the Jan. 1, 2014, requirement that first reports of injury be

filed electronically. Many reporters 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.

Late first payment penalties have remained consistent since fiscal-year 2013, with a temporary spike in fiscal-year 2014, most likely due to reporters becoming acclimated to electronic filing of first report of injury data. The number of penalties for late denial has spiked since fiscal-year 2013, most likely due to an increased number of claim denials overall, following precedent-setting case law addressing the causation standard.

“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 DLI. In fiscal-year 2015, most were assessed for the insurer’s failure to file a Disability Status Report form or a Notice of Intention to Discontinue Benefits form after the employee had not returned to work within a certain period of time. Fiscal-year 2016 showed a rather dramatic drop in the number of “other penalties” assessed due to better compliance with requests to file forms.

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, correlating to a return to baseline of the number of rehabilitation provider penalties assessed and collected in fiscal-year 2016.

Conclusion

The number of failure-to-insure penalties issued and the penalty amount collected have stabilized as greater emphasis has been placed on partnering with other state, county and city agencies to ensure workers’ compensation insurance is in place at the time those agencies issue licenses to employers. Continuing efforts to reach all new business owners to inform them of their responsibility to obtain workers’ compensation insurance appear to have been successful.

Claim-related penalties have remained relatively stable. Penalties issued for late filing of the first report of injury increased in fiscal-years 2014 through 2016, likely due to increased filings from system auto-triggers related to mandatory electronic reporting. Although the overall number of prohibited practice penalties issued has decreased, the number of penalties with a dollar amount assessed increased in fiscal-year 2016.

“Other penalties” decreased in fiscal-year 2016, due to increased compliance with requests to file forms. Precedent-setting case law addressing the causation standard in workers’ compensation has led to an increase in denials of workers’ compensation claims, correlating with an increase in the number of penalties assessed for late denials in fiscal-year 2016.

Appendix table
Workers' Compensation Division penalty statistics

Penalty type	FY 2013				FY 2014				FY 2015				FY 2016			
	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)	617	\$265,750	467	\$202,900	862	\$377,375	768	\$333,605	888	\$403,500	899	\$346,275	879	\$403,250	910	\$358,775
Late 1st payment (M.S. 176.221 & 176.225)	757	\$314,491 \$114,260	688	\$262,637	806	\$340,898 \$126,967	829	\$328,187	747	\$313,739 \$117,055	771	\$295,914	760	\$341,253 \$119,582	780	\$328,433
Late denial (M.S. 176.221)	194	\$93,250	167	\$76,250	175	\$87,500	165	\$82,125	171	\$102,500	180	\$80,775	203	\$134,500	208	\$90,925
Prohibited practices (M.S. 176.194)	60	\$246,000	40	\$162,086	37	\$129,000	40	\$141,500	34	\$114,000	41	\$106,785	47	\$180,000	38	\$118,400
Rehabilitation provider discipline (M.S. 176.102)	1	\$1,000	1	\$1,000	3	\$2,250	3	\$2,250	6	\$3,625	8	\$5,075	2	\$900	1	\$450
Managed care organization discipline (M.S. 176.1351)	1	\$1,500	0	\$0	1	\$25,000	1	\$25,000	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)	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 \$1,557,270	442	\$912,089	396	\$1,981,988 \$1,545,527	443	\$862,097
Late filing of special fund assessment (M.S. 176.129 & 176.130)	8	\$10,578	6	\$9,650	35	\$66,271	20	\$46,297	33	\$67,199	28	\$42,671	15	\$22,772	20	\$29,530
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	485	\$168,271 \$180,540	332	\$111,060	417	\$157,805 \$139,918	383	\$134,723	470	\$148,359 \$216,044	509	\$111,534	339	\$101,133 \$152,616	317	\$85,137
Totals	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	2,641	\$3,001,533	2,717	\$1,873,748

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 Failure to Insure Assessed Penalty Amounts show the initial estimated penalty amounts over the more precise final penalty amounts.