

COLLECTION AND ASSESSMENT OF FINES AND PENALTIES

IN THE WORKERS' COMPENSATION SYSTEM

FISCAL-YEAR 2017

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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 2014 through 2017, 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 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

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 from fiscal-years 2014 and 2015. The increase in fiscal-year 2017 was as a result of a single third-party administrator failing to timely pay medical bills on behalf of multiple carriers.

The increase in late filing of first report of injury penalties in fiscal-year 2014 and 2015 was 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 received 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. The decrease in fiscal-years 2016 and 2017 reflects acclimation of reporters to the electronic filing mandate; this acclimation also accounts for the overall decrease in late first payment penalties during the same period.

The number of penalties for late denial had reached a 21st century low in fiscal-year 2013, but increased in recent years 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. In fiscal-year 2014, a high percentage of “other penalties” assessed was 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 Workers’ Compensation 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. The increase in fiscal-year 2017 was due to the failure of a single third-party administrator to timely pay medical bills on behalf of multiple carriers.

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-years 2016 and 2017.

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

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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.

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Appendix table: Workers' Compensation Division penalty statistics

Fiscal-year 2017

| Penalty type | Assessed total number | Assessed dollar amount | Collected total number | Collected dollar amount |
|---|------------------------------|-------------------------------|-------------------------------|--------------------------------|
| Late filing of first report (M.S. 176.231) | 834 | \$371,125 | 804 | \$306,713 |
| Late first payment (M.S. 176.221 and 176.225) | 656 | \$267,063 \$95,668 | 654 | \$255,990 |
| Late denial (M.S. 176.221) | 202 | \$128,250 | 207 | \$103,375 |
| Prohibited practices (M.S. 176.194) | 51 | \$246,000 | 34 | \$81,500 |
| Rehabilitation provider discipline (M.S. 176.102) | 2 | \$1,000 | 4 | \$1,000 |
| Managed care organization discipline (M.S. 176.1351) | 0 | \$0 | 0 | \$0 |
| Health care provider discipline (M.S. 176.103) | 0 | \$0 | 0 | \$0 |
| Failure to insure (M.S. 176.181) | 235 | \$1,463,744 \$1,071,248 | 346 | \$748,778 |
| Late filing of special fund assessment (M.S. 176.129 and 176.130) | 30 | \$49,671 | 21 | \$40,203 |
| Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 and 176.84) | 404 | \$159,505 \$180,871 | 293 | \$84,042 |
| Totals | 2,414 | \$2,570,401 | 2,363 | \$1,621,601 |

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 first payment and other penalties show the amount payable to the department first and the amount payable to the employee second.

The failure to insure penalty amounts show the initial estimated penalty amounts over the more precise penalty amounts.

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Fiscal-year 2016

| Penalty type | Assessed total number | Assessed dollar amount | Collected total number | Collected dollar amount |
|---|------------------------------|-------------------------------|-------------------------------|--------------------------------|
| Late filing of first report (M.S. 176.231) | 879 | \$403,250 | 910 | \$358,775 |
| Late first payment (M.S. 176.221 and 176.225) | 760 | \$341,253 \$119,582 | 780 | \$328,433 |
| Late denial (M.S. 176.221) | 203 | \$134,500 | 208 | \$90,925 |
| Prohibited practices (M.S. 176.194) | 47 | \$180,000 | 38 | \$118,400 |
| Rehabilitation provider discipline (M.S. 176.102) | 2 | \$900 | 1 | \$450 |
| Managed care organization discipline (M.S. 176.1351) | 0 | \$0 | 0 | \$0 |
| Health care provider discipline (M.S. 176.103) | 0 | \$0 | 0 | \$0 |
| Failure to insure (M.S. 176.181) | 396 | \$1,981,988 \$1,545,527 | 443 | \$862,097 |
| Late filing of special fund assessment (M.S. 176.129 and 176.130) | 15 | \$22,772 | 20 | \$29,530 |
| Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 and 176.84) | 339 | \$101,133 \$152,616 | 317 | \$85,137 |
| Totals | 2,641 | \$3,001,533 | 2,717 | \$1,873,748 |

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Fiscal-year 2015

| Penalty type | Assessed total number | Assessed dollar amount | Collected total number | Collected dollar amount |
|---|------------------------------|-------------------------------|-------------------------------|--------------------------------|
| Late filing of first report (M.S. 176.231) | 888 | \$403,500 | 899 | \$346,275 |
| Late first payment (M.S. 176.221 and 176.225) | 747 | \$313,739 \$117,055 | 771 | \$295,914 |
| Late denial (M.S. 176.221) | 171 | \$102,500 | 180 | \$80,775 |
| Prohibited practices (M.S. 176.194) | 34 | \$114,000 | 41 | \$106,785 |
| Rehabilitation provider discipline (M.S. 176.102) | 6 | \$3,625 | 8 | \$5,075 |
| Managed care organization discipline (M.S. 176.1351) | 0 | \$0 | 0 | \$0 |
| Health care provider discipline (M.S. 176.103) | 0 | \$0 | 0 | \$0 |
| Failure to insure (M.S. 176.181) | 375 | \$1,988,272 \$1,537,270 | 442 | \$912,089 |
| Late filing of special fund assessment (M.S. 176.129 and 176.130) | 33 | \$67,199 | 28 | \$42,671 |
| Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 and 176.84) | 470 | \$148,359 \$216,044 | 509 | \$111,534 |
| Totals | 2,724 | \$3,023,291 | 2,878 | \$1,901,117 |

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Fiscal-year 2014

| Penalty type | Assessed total number | Assessed dollar amount | Collected total number | Collected dollar amount |
|---|------------------------------|-------------------------------|-------------------------------|--------------------------------|
| Late filing of first report (M.S. 176.231) | 862 | \$377,375 | 768 | \$333,605 |
| Late first payment (M.S. 176.221 and 176.225) | 806 | \$340,898 \$126,967 | 829 | \$328,187 |
| Late denial (M.S. 176.221) | 175 | \$87,500 | 165 | \$82,125 |
| Prohibited practices (M.S. 176.194) | 37 | \$129,000 | 40 | \$141,500 |
| Rehabilitation provider discipline (M.S. 176.102) | 3 | \$2,250 | 3 | \$2,250 |
| Managed care organization discipline (M.S. 176.1351) | 1 | \$25,000 | 1 | \$25,000 |
| Health care provider discipline (M.S. 176.103) | 0 | \$0 | 0 | \$0 |
| Failure to insure (M.S. 176.181) | 463 | \$1,848,265 \$1,514,061 | 558 | \$935,393 |
| Late filing of special fund assessment (M.S. 176.129 and 176.130) | 35 | \$66,271 | 20 | \$42,297 |
| Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 and 176.84) | 417 | \$157,805 \$139,918 | 383 | \$134,723 |
| Totals | 2,799 | \$2,967,045 | 2,767 | \$2,029,079 |

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