



FISCAL-YEAR 2008

**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.....	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.

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

- **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 (also can be assessed against wood mills).

- **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 2005 through 2008 (July 1 through June 30).

Penalty procedure

When a potential penalty situation is identified, a penalty notice is sent describing the infraction and the dollar amount. An objection to the penalty must be filed in writing within 30 days, except for failure to obtain workers' compensation insurance, which is within 10 days. Upon timely objection to a penalty, attempts are made to settle. 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 (M.S. §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 has a wider range of unknown factors when a penalty is issued. The initial penalty amount is determined based on 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 on information submitted to the state of Minnesota by the employer. Upon notification of a penalty, the employer may furnish the department with additional information for calculating a true evaded premium, which is used to determine the actual penalty. Therefore, the initial penalty amount is a starting point and the final penalty amount is what the department has determined 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, employer lack of assets or the department's inability to locate the employer.

During the previous year, steps were taken to promote continued education and enforcement of statutory regulations, including the following.

1. A formal procedure for the enforcement of M.S. §176.181, Subd. 4, was written, detailing steps leading to the criminal prosecution of employers that willfully and intentionally fail to comply with the requirement of carrying workers' compensation insurance.
2. Employers that had previously been penalized for not having workers' compensation insurance were checked to verify each employer had maintained insurance coverage and was in current compliance with the law.
3. The Department of Labor and Industry, the Department of Revenue and the Department of Employment and Economic Development met in an effort to increase information sharing among agencies.

4. Internal processes were examined and a procedure for sharing information between the Construction Codes and Licensing Division (CCLD) and the Claims Services and Investigation (CSI) unit was instituted. Employers with contractor licenses that failed to maintain workers' compensation coverage were referred to CCLD, which incorporated obtaining coverage into its enforcement actions.

Prohibited practice penalties

It appears the large decrease in prohibited practice penalties is due to increased compliance by insurers and self-insurers responding to department requests.

Late filing of Special Compensation Fund assessment penalties

There was a 31 percent drop in the number of penalties assessed due to the late filing of Special Compensation Fund assessment reports. This was due, in part, to the department's 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 claim-related penalties from year to year, most 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 the same period and the slight increase in timeliness of first action on claims.

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

The 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 (M.S. §176.221 and 176.84) and for evidence of proper investigation and other elements (M.S. §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.

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 recommended increased enforcement measures for rehabilitation providers. The department continues to provide education to stakeholders to attain voluntary compliance.

In 2009, 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 M.S. §176.182, when a business or individual wishing to do business applies for a license or permit in Minnesota. The certificate of compliance form is 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 is establishing a baseline during the first half of 2009; it will begin penalizing in the latter half of 2009.

Conclusion

While the department has taken active measures and has enhanced enforcement efforts, it is evident continued emphasis and education is necessary to ensure all entities are in compliance with workers' compensation laws.

During the coming year, the department will continue to focus its efforts on increased collaboration and information sharing with other state agencies, as well as increased education for stakeholders.

Appendix table
Workers' Compensation Division penalty statistics

Penalty type	FY 2005				FY 2006				FY 2007				FY 2008			
	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)	665	\$282,375	494	\$200,556	674	\$288,125	460	\$193,542	502	\$216,500	510	\$215,996	796	\$343,750	670	\$284,104
Late 1st payment (M.S. 176.221 & 176.225)	1,238	\$492,735	1,090	\$387,846	1,104	\$426,572	1,080	\$367,475	1,012	\$444,260	941	\$345,778	985	\$393,589	970	\$348,555
		\$168,816				\$150,207				\$148,540				\$138,753		
Late denial (M.S. 176.221)	427	\$269,000	320	\$167,986	461	\$277,000	397	\$203,668	342	\$199,000	279	\$145,141	298	\$158,500	243	\$113,985
Prohibited practices (M.S. 176.194)	46	\$147,000	22	\$59,860	62	\$228,000	48	\$113,086	86	\$366,000	75	\$253,211	36	\$153,000	46	\$134,299
Rehabilitation provider discipline (M.S. 176.102)	2	\$3,400	2	\$3,200	4	\$2,350	5	\$2,550	5	\$3,150	4	\$2,700	0	\$0	1	\$450
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)	131	\$2,340,418	217	\$393,113	153	\$2,989,498	159	\$492,075	144	\$1,796,805	157	\$472,168	295	\$4,078,020	240	\$769,097
		\$1,135,357				\$2,519,905				\$1,447,706				\$3,420,825		
Late filing of special fund assessment (M.S. 176.129 & 176.130)	83	\$229,423	95	\$223,507	82	\$257,441	73	\$209,591	119	\$160,387	103	\$117,593	62	\$90,711	57	\$61,244
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	148	\$61,086	107	\$40,319	292	\$157,266	187	\$76,159	353	\$193,362	328	\$146,522	281	\$116,100	241	\$89,141
		\$44,721				\$71,350				\$37,248				\$48,831		
Totals	2,740	\$2,833,913	2,347	\$1,476,387	2,832	\$4,378,216	2,409	\$1,658,146	2,563	\$3,216,152	2,397	\$1,699,109	2,753	\$4,864,059	2,468	\$1,800,875

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