

FISCAL-YEAR 2014



**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 2011 through 2014, 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 or 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 contact new employers to provide them with information regarding their potential obligation to carry workers' compensation insurance, 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

There was an increase in the number of penalties due to late filing and payment of the special fund assessment in fiscal-year 2014. An audit of prior fiscal years resulted in an additional four penalties totaling \$5,180 being assessed in fiscal-year 2014.

Claim-related penalties

In fiscal-year 2013, the number of prohibited practices penalties increased due to several insurance companies, self-insured companies or adjusting companies incurring multiple penalties for failing to respond to DLI requests or late payments of awards or orders. The number of prohibited practices penalties has fallen in fiscal-year 2014 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-year 2014 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 first reports of injury.

Fiscal-year 2013 represented the highest total of "Other penalties" assessed in more than a decade, due primarily to insurers not filing a required form when requested by DLI's Compliance, Records and Training unit. Even though the number of "Other penalties" declined

in fiscal-year 2014, a significant portion of these penalties were assessed due to insurers not filing a required form. “Other penalties” consist of various penalties for late payments of indemnity benefits, awards or orders, failing to file required forms, etc.

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 high number of prohibited practices penalties in fiscal-years 2013 and 2014 was due to the actions from a few individual insurance carriers.

Although there was a marked increase in penalties issued for late filing of the first report of injury in fiscal-year 2014, it is anticipated this will decrease in fiscal-year 2015, as reporters become acclimated to 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.

Appendix table

Workers' Compensation Division penalty statistics

Penalty type	FY 2011				FY 2012				FY 2013				FY 2014			
	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)	611	\$263,875	514	\$215,744	675	\$293,625	535	\$234,300	617	\$265,750	467	\$202,900	862	\$377,375	768	\$333,605
Late 1st payment (M.S. 176.221 & 176.225)	670	\$300,682	628	\$260,044	753	\$334,600	697	\$275,578	757	\$314,491	688	\$262,637	806	\$340,898	829	\$328,187
		\$103,699				\$117,917				\$114,260				\$126,967		
Late denial (M.S. 176.221)	227	\$154,500	170	\$90,750	195	\$105,750	162	\$79,075	194	\$93,250	167	\$76,250	175	\$87,500	165	\$82,125
Prohibited practices (M.S. 176.194)	38	\$117,000	33	\$92,975	47	\$150,000	27	\$69,500	60	\$246,000	40	\$162,086	37	\$129,000	40	\$141,500
Rehabilitation provider discipline (M.S. 176.102)	5	\$2,650	8	\$4,000	2	\$1,050	2	\$1,050	1	\$1,000	1	\$1,000	3	\$2,250	3	\$2,250
Managed care organization discipline (M.S. 176.1351)	0	\$0	0	\$0	0	\$0	0	\$0	1	\$1,500	0	\$0				
Health care provider discipline (M.S. 176.103)	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0				
Failure to insure (M.S. 176.181)	1,095	\$4,199,216	1,149	\$1,658,946	757	\$2,624,200	850	\$1,302,766	572	\$2,017,591	791	\$1,264,339	463	\$1,848,265	558	\$935,393
		\$2,107,626				\$1,582,484				\$1,554,745				\$1,514,061		
Late filing of special fund assessment (M.S. 176.129 & 176.130)	79	\$108,161	31	\$42,498	19	\$8,504	4	\$4,000	8	\$10,578	6	\$9,650	35	\$66,271	20	\$46,297
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 & 176.84)	277	\$103,990	219	\$74,476	385	\$133,832	253	\$91,931	485	\$168,271	332	\$111,060	417	\$157,805	383	\$134,723
		\$126,362				\$154,431				\$180,540				\$139,918		
Totals	3,002	\$3,388,545	2,752	\$2,439,433	2,833	\$2,882,193	2,530	\$2,058,200	2,695	\$2,950,385	2,492	\$2,089,923	2,798	\$2,942,045	2,766	\$2,004,079

* "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.