



Collection and assessment of fines and penalties

in the workers' compensation system

Fiscal-year 2018

Minnesota Department of Labor and Industry
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As requested by Minnesota Statutes 3.197: This report cost approximately \$500 to prepare, including staff time, printing and mailing expenses.

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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 2015 through 2018, 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 contacted more than 5,700 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.

Special compensation fund assessment late filing and payment penalties

Insurers and self-insurers must report prior year indemnities by April 1. DLI assesses a \$200 penalty when reports are filed late because the information is necessary to accurately spread the assessment across active insurers and self-insurers. The number of late reporting penalties increased in 2018 because all penalties are now assessed immediately, instead of after the entity reports.

Invoices based on annual indemnities reporting are due Aug. 1 and Feb. 1 of the following year. DLI assesses penalties up to 15 percent of the amount due on late payments. Late payment penalties were higher in 2018 because penalties are now assessed upon late payment, instead of after the assessment has been paid.

Claim-related penalties

Warnings are not tracked as part of this report. DLI issued fewer prohibited practices penalties overall in fiscal-year 2018, possibly because a higher number of penalties with a dollar amount were assessed in recent years. The slight 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 slight decrease in the late filing of first reports of injury penalties from fiscal-year 2015 to 2018 is partially due to reporters adjusting to the 2014 requirement that first reports of injury be filed electronically. Reporters are programming their systems to send first reports of injury when appropriate criteria are met.

The number of late denial penalties have risen 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. 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 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 and also informs why fiscal-year 2018 returned to a more normal rate.

Rehabilitation provider discipline during fiscal-year 2018 remained small and in line with 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 with some reduction in the overall numbers and amounts issued during fiscal-year 2018.

“Other penalties” decreased in fiscal-year 2018, 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, but even that has balanced during fiscal-year 2018.

Appendix tables: Workers' Compensation Division penalty statistics

Fiscal-year 2018

Penalty type	Assessed total number	Assessed dollar amount	Collected total number	Collected dollar amount
Late filing of first report (M.S. 176.231)	805	\$372,000	691	\$312,438
Late first payment (M.S. 176.221 and 176.225)	732	\$308,142 \$113,913	682	\$282,474
Late denial (M.S. 176.221)	135	\$75,000	120	\$66,250
Prohibited practices (M.S. 176.194)	6	\$18,000	39	\$94,500
Rehabilitation provider discipline (M.S. 176.102)	3	\$2,000	3	\$2,000
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)	214	\$1,620,049 \$977,226	288	\$759,884
Late filing of special fund assessment (M.S. 176.129 and 176.130)	115	\$100,198	86	\$103,305
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238 and 176.84)	239	\$97,261 \$126,747	223	\$107,128
Totals	2,249	\$2,190,487	2,132	\$1,727,979

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.

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.

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

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

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.

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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

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.