

FISCAL-YEAR 2007



**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 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 below mentioned reasons.

- **Employers:**
 - failure to obtain worker's 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 2004 through 2007 (July 1 through June 30).

Penalty procedure and allocation

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 (Minnesota Statutes §176.103) prior to being heard by the Minnesota Workers' Compensation Court of Appeals and the Minnesota Supreme Court.

While the majority of penalties are paid to the Assigned Risk Safety Account, injured employees may also receive the penalty, particularly in the case where there is a late payment of benefits.

The Assigned Risk Safety Account was created in 1992 by the Minnesota Legislature to finance safety programs within the department. A primary emphasis is on providing matching grants or loans to employers for the purpose of improving the safety of their workplaces.

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 presented to the uninsured employer is first assessed based on the known information at the time of the referral. Using the employer's payroll, assigned risk rate and experience modification rate, an estimated evaded premium (EEP) is calculated. Various factors are applied to the EEP to derive the assessed penalty. Upon notification of a penalty, the employer may furnish the department with additional information, including actual risk rates, exempt payroll or, possibly, a policy that was unknown to the investigator. The penalty administrator will then calculate a true evaded premium based on this more accurate information or may also dismiss the assessment if coverage was indeed in place.

Therefore, the initial penalty amount is a starting point. The reduced penalty amount shows what the penalty administrator is actually trying to collect. The disparity between the reduced penalty amount and the collected amount is the result of problems throughout the collection process due to employer bankruptcy, lack of assets or the inability to locate the employer.

During the previous year, steps have been taken to promote continued education and enforcement of statutory regulations. Outreach efforts included the following.

1. The department worked with the Department of Human Services regarding fiscal intermediaries, an increasingly popular method of providing services to DHS clients. Legal issues were identified along with the need for legislation to correct conflicting statutory language between the departments.
2. DLI collaborated with the Secretary of State, creating a more prominently displayed Web site link from the Secretary of State site to the DLI workers' compensation information.
3. All county attorneys were corresponded with regarding their practices in ensuring required workers' compensation information is documented for all business licenses and permits issued.
4. DLI had informational meetings with a semi-pro football league to explain the statute.
5. The department started a longer-term project reviewing all state agencies to determine if the agencies are aware of obligations contained in Minnesota Statutes §176.182 with regard to asking for acceptable evidence of compliance with workers' compensation insurance coverage.

The Workers' Compensation Division has also increased internal communication and collection coordination of failure-to-insure penalties by moving three stand-alone databases into the department's main database.

Claim-related penalties

Although there is ordinarily some natural fluctuation in the numbers of these penalties from year to year, most claim-related penalties have trended slightly downward since 2001. Late First Report, Late Denial and Late First Payment penalties have all declined slightly overall since 2001. This trend follows a gradual decline in the number of "lost-time" claims during that same period.

The increase, since 2005, in the quantity of the "other penalties" category 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 (Minnesota Statutes §176.221 and 176.84) and for evidence of proper investigation and other elements (Minnesota Statutes §176.225). This effort is designed to improve the quality and consistency of denial notices throughout the claims handling industry.

Conclusion

While the department has taken proactive 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, an internal workgroup is being convened to review internal processes related to enforcement and the subsequent collection of fines and penalties, taking action as identified to increase the efficiency and effectiveness of this area of responsibility.