

FISCAL YEAR 2013



**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 2010 through 2013, 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

The number and amount of penalties for the late filing of special fund assessments has significantly decreased. There was a decrease in the number of penalties due to late filing and payment of the special fund assessment in fiscal-year 2012 and fiscal-year 2013. An audit is being conducted to determine if there are additional penalties that need to be assessed.

Claim-related penalties

The increase in prohibited practices penalties can be attributed to several insurance companies, self-insured companies or adjusting companies incurring multiple penalties in fiscal-year 2013. There were a few insurers that received multiple penalties for \$3,000 and \$6,000 for failing to respond to DLI requests or late payments of awards or orders.

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. In fiscal-year 2013, more insurers began filing first reports of injury via electronic data interchange (EDI), which may contribute to the reduction in penalties for the late filing of the first report.

In fiscal-year 2013, the increase in "Other penalties" was due primarily to insurers not filing a required form when requested by DLI's Compliance, Records and Training unit. "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 increase in prohibited practices penalties was due to the actions from a few individual insurance carriers.

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 2010				FY 2011				FY 2012				FY 2013			
	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)	553	\$227,875	430	\$178,641	611	\$263,875	514	\$215,744	675	\$293,625	535	\$234,300	617	\$265,750	467	\$202,900
Late 1st payment (M.S. 176.221 & 176.225)	688	\$344,738 \$110,667	658	\$273,112	670	\$300,682 \$103,699	628	\$260,044	753	\$334,600 \$117,917	697	\$275,578	757	\$314,491 \$114,260	688	\$262,637
Late denial (M.S. 176.221)	289	\$187,500	232	\$121,020	227	\$154,500	170	\$90,750	195	\$105,750	162	\$79,075	194	\$93,250	167	\$76,250
Prohibited practices (M.S. 176.194)	56	\$183,000	49	\$138,437	38	\$117,000	33	\$92,975	47	\$150,000	27	\$69,500	60	\$246,000	40	\$162,086
Rehabilitation provider discipline (M.S. 176.102)	3	\$1,350	5	\$2,700	5	\$2,650	8	\$4,000	2	\$1,050	2	\$1,050	1	\$1,000	1	\$1,000
Managed care organization discipline (M.S. 176.1351)	0	\$0	0	\$0	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	0	\$0	0	\$0
Failure to insure (M.S. 176.181)	661	\$3,161,394 \$2,151,051	825	\$1,385,416	1,095	\$4,199,216 \$2,107,626	1,149	\$1,658,946	757	\$2,624,200 \$1,582,484	850	\$1,302,766	572	\$2,017,591 \$1,554,745	791	\$1,264,339
Late filing of special fund assessment (M.S. 176.129 & 176.130)	31	\$93,894	37	\$70,866	79	\$108,161	31	\$42,498	19	\$8,504	4	\$4,000	8	\$10,578	6	\$9,650
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	235	\$102,916 \$53,811	216	\$86,811	277	\$103,990 \$126,362	219	\$74,476	385	\$133,832 \$154,431	253	\$91,931	485	\$168,271 \$180,540	332	\$111,060
Totals	2,516	\$3,456,802	2,452	\$2,257,003	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

* "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.