

FISCAL-YEAR 2010



**COLLECTION AND ASSESSMENT
OF FINES AND PENALTIES**

IN THE WORKERS' COMPENSATION SYSTEM



Workers' Compensation Division
Minnesota Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

January 2011

The total estimated cost of publishing this report is \$500.

Additional copies of this report are available by calling the Workers' Compensation Division at (651) 284-5030 or toll-free at 1-800-342-5354.

Information in this report can be obtained in alternative formats by calling the department at 1-800-342-5354 or TTY (651) 297-4198.

Visit the DLI website at www.dli.mn.gov.

Table of contents

Introduction	1
Penalty procedure and allocation	2
Observations	2
Conclusion	3
Appendix table	4

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 to the Legislature.

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 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.

- **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 2007 through 2010, 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 issued. The initial penalty amount is determined based upon 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 Department of Labor and Industry by the employer. Upon notification of a penalty, the employer may furnish the department 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 the department 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 or lack of assets, or the department's inability to locate the employer.

The department has continued to improve and increase its efforts to find employers that have never obtained or fail to maintain workers' compensation coverage. This has included an increase in efforts to ensure canceled policies are investigated within six months of the cancellation. Additionally, in response to the Legislative Auditor's findings in a report issued in February 2009, the department has developed a means to investigate employers that should have obtained workers' compensation insurance but never did so. Both of these efforts have dramatically increased the number of penalties issued and subsequent collections of penalties owed. There was a 31 percent increase in the number of penalties issued from fiscal-year 2009 to fiscal-year 2010, and a 32 percent increase in the amount of penalties collected.

Prohibited practice penalties

Prohibited practice penalties are assessed per Minnesota Statutes § 176.194 for prohibited conduct, typically for failing to do something within a specified time frame. There had been a decrease in these penalties from fiscal-year 2007 to fiscal-year 2009 due to increased compliance by the insurers and self-insurers. There was an increase in penalties in fiscal-year 2010 due to some insurers with multiple violations.

Late filing of special fund assessment penalties

The number of penalties assessed due to the late filing of special fund assessment reports continues to decrease, in part because of the institution of an online filing system versus reliance on paper correspondence.

Claim-related penalties

Most claim-related penalties have trended downward since fiscal-year 2007, paralleling the gradual decline in the number of lost-time claims during the same time period. The timeliness for the insurer's first action (making the first payment of wage-loss benefits or denying liability) has increased gradually since fiscal-year 2007.

A large increase in the number of penalties for late filing of the first report comes from increased reporting problems with several insurance companies, some of which moved claim offices within the recent years. The number of these penalties fell in fiscal-year 2010.

An 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 (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 claim-handling industry. This effort has resulted in decreases in fiscal-years 2008 through 2010.

Rehabilitation provider discipline

During 2010, the department worked with rehabilitation providers (individuals and companies) to enhance compliance with workers' compensation rules and statutes. Additionally, two national qualified rehabilitation consultant (QRC) firms are working with the department to improve a few selected business practices. Individual rehabilitation providers have improved their voluntary compliance and are contacting the department when questions arise. The department will continue to provide education to stakeholders, with the goal of enhanced rehabilitation outcomes.

Conclusion

During the past year, the department continued to work with both the Department of Employment and Economic Development and the Department of Revenue to increase communication, data sharing and, ultimately, impact enforcement efforts. Employees have worked to achieve better communication with affected stakeholders. Management focused on streamlining internal procedures and realigned staff members. Initial findings show these efforts to be successful. Continued collaboration will be fostered to ensure compliance with the laws of Minnesota.

Appendix table
Workers' Compensation Division penalty statistics

Penalty type	FY 2007				FY 2008				FY 2009				FY 2010			
	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)	502	\$216,500	510	\$215,996	796	\$343,750	670	\$284,104	694	\$309,250	624	\$268,592	553	\$227,875	430	\$178,641
Late 1st payment (M.S. 176.221 & 176.225)	1,012	\$444,260 \$148,540	941	\$345,778	985	\$393,589 \$138,753	970	\$348,555	811	\$353,198 \$121,273	800	319,224	688	\$344,738 \$110,667	658	\$273,112
Late denial (M.S. 176.221)	342	\$199,000	279	\$145,141	298	\$158,500	243	\$113,985	310	\$208,750	272	\$142,480	289	\$187,500	232	\$121,020
Prohibited practices (M.S. 176.194)	86	\$366,000	75	\$253,211	36	\$153,000	46	\$134,299	27	\$81,000	17	\$45,588	56	\$183,000	49	\$138,437
Rehabilitation provider discipline (M.S. 176.102)	5	\$3,150	4	\$2,700	1	\$16,500	1	\$11,000	9	\$4,850	11	\$10,850	3	\$1,350	5	\$2,700
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)	144	\$1,796,805 \$1,447,706	157	\$472,168	295	\$4,078,020 \$3,420,825	240	\$769,097	505	\$4,457,262 \$2,955,804	451	\$1,056,021	661	\$3,161,394 \$2,151,051	825	\$1,385,416
Late filing of special fund assessment (M.S. 176.129 & 176.130)	119	\$160,387	103	\$117,593	62	\$90,711	57	\$61,244	28	\$112,075	29	\$54,803	31	\$93,894	37	\$70,866
Other penalties (M.S. 176.221, 176.225, 176.138, 176.231, 176.238, & 176.84)	353	\$193,362 \$37,248	328	\$146,522	281	\$116,100 \$48,831	241	\$89,141	268	\$124,156 \$28,852	242	\$86,954	235	\$102,916 \$53,811	216	86,811
Totals	2,563	\$3,216,152	2,397	\$1,699,109	2,754	\$4,880,559	2,468	\$1,811,425	2,652	\$4,299,208	2,446	\$1,984,512	2,516	\$3,456,802	2,452	\$2,257,004

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.